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Homeless Legal Advocacy: New Challenges and Directions for the Future

Cover Page Footnote

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HOMELESS LEGAL ADVOCACY: NEW CHALLENGES AND DIRECTIONS FOR THE FUTURE

*Jonathan L. Hafetz**

When large numbers of homeless people began appearing on the streets of American cities in the late 1970s, a sense of crisis galvanized advocates, the media, and policymakers.¹ Now, over two decades later, there are more homeless people than ever, and numbers are rising rapidly, particularly among families with children.² The economic expansion of the 1990s not only failed to end the crisis, but also placed greater pressure on housing markets, driving up rents and increasing the scarcity of affordable housing for low-income individuals and families.³ The recent recession has caused a sharp increase in the homeless population, once again making homelessness front-page news.⁴

Yet, the sense of shock and emergency has all but vanished. Homelessness has been studied exhaustively by social scientists and covered extensively in the media. Programs and services for homeless people have become permanent and institutionalized, with a system of public and private shelters, an array of service providers, and legal rules governing the rights of homeless people.⁵ What was once seen as a temporary crisis has become a fixed part of the social and political landscape.

This Article examines the role of lawyers for homeless people.⁶ It argues that while even the most zealous legal advocacy cannot

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1. See *infra* text accompanying notes 18-19.

2. See *infra* note 40.

3. See MARTHA BURT ET AL., HELPING AMERICA'S HOMELESS: EMERGENCY SHELTER OR AFFORDABLE HOUSING? 10 (2001).

4. See, e.g., Editorial, *Ending Chronic Homelessness*, N.Y. TIMES, Mar. 13, 2002, at A24; Pam Belluck, *New Wave of the Homeless Floods Cities' Shelters*, N.Y. TIMES, Dec. 18, 2001, at A1; Leslie Kaufman & Keven Flynn, *New York's Homeless, Back Out in the Open*, N.Y. TIMES, Oct. 13, 2002, § 1, at 1; Alexandra Marks, *US Shelters Swell—With Families*, CHRISTIAN SCI. MONITOR, Nov. 29, 2001, at 1.

5. See Martha R. Burt, What Will It Take To End Homelessness (describing the substantial growth of the homeless service system in the 1990s, including an increase in available beds from 275,000 in 1988 to 607,000 in 1996), at http://www.urban.org/housing/homeless/end_homelessness.html (last visited Mar. 15, 2003).

6. See *infra* Part II.

alone solve homelessness, it remains an important tool because of the assistance it provides to individuals, its impact on broader legal rules, and its potential role in shaping public perception and debate.⁷

The Article also maintains that legal advocacy works best when combined with a holistic approach that addresses homeless clients' non-legal needs, such as housing placement, case management, medical and psychiatric care, job training, and substance abuse counseling.⁸ It further argues that, to the extent possible, lawyers for homeless people should focus their efforts and resources around those areas that research and experience have identified as the leading causes of homelessness and the most open to solutions.⁹

Part One summarizes the growth of homelessness during the past two decades. It then describes its most prominent features and underlying causes.

Part Two describes the evolution of homeless legal advocacy. First, it looks at the initial wave of litigation during the 1980s over the right to emergency shelter for the homeless. It then examines the second phase of litigation during the 1990s that challenged the attempts by municipalities to reduce the visible homeless population through various measures, such as anti-vagrancy, anti-camping, and "quality of life" ordinances. While this litigation has led to important victories and captured the public's attention (though not always its wholehearted support), it remains only a part of the picture. Suing over the right to emergency shelter or the right to panhandle on streets or sleep in parks is critical to many homeless people, but it does not address the underlying causes of homelessness, such as the crisis of affordable housing, decreasing income and public benefit levels, and lack of access to other needed services.

Part Three outlines the continued importance of legal advocacy for the homeless. It addresses critiques of legal service models, and it explains why legal representation, though inherently limited, remains vital to this vulnerable and disempowered population. It then argues that, where possible, such representation should be tailored to the problems that research and experience have shown to be the most significant causes of homelessness and that may be addressed through legal advocacy. It also discusses the potential of litigation to affect public debate and dispel negative stereotypes

7. *See infra* Part III.

8. *See infra* Part III.

9. *See infra* Part III.

about homeless people. It next describes the importance of developing models of legal advocacy in holistic settings where critical non-legal needs of homeless people may be met. While lawyers will not solve a problem as complex and deeply rooted as homelessness, they still have an important role to play.

I. HOMELESSNESS AND ITS CAUSES

There have always been homeless people in America.¹⁰ It was not until the nineteenth century, however, that a large group of transient, family-less laborers became institutionalized in American cities.¹¹ During the worst years of the Great Depression of the 1930s, when one-quarter of the workforce was unemployed, the number of homeless people skyrocketed, reaching as many as 1.5 million.¹² In the 1950s and 1960s, over a million people, many with a history of mental illness and/or chemical dependency, lived in sub-standard housing in skid row areas that were growing closer to expanding commercial and administrative activities.¹³ What has changed is the nature of homelessness, the public's understanding of the term, and the perception of homeless people themselves.¹⁴

Since the late 1970s, the number of people without a place to sleep at night has steadily grown.¹⁵ Even during the economic boom of the 1990s, homelessness increased.¹⁶ In contrast to the 1950s and 1960s, when many homeless were single male adults sleeping in cubicle and residential, single room occupancy hotel rooms ("SROs"), the last two decades have seen a sharp increase in the number of homeless people living on the street, including

10. See KENNETH L. KUSMER, *DOWN AND OUT, ON THE ROAD: THE HOMELESS IN AMERICAN HISTORY* 3-5 (2002); PETER H. ROSSI, *DOWN AND OUT IN AMERICA: THE ORIGINS OF HOMELESSNESS* 17 (1989); see also E.L. Bassuk & D. Franklin, *Homelessness Past and Present: The Case of the United States, 1890-1925*, 8 *NEW ENG. J. PUB. POL'Y* 67, 68 (1992) (noting that the profile of homeless people partly reflects the country's social history).

11. KUSMER, *supra* note 10, at 147-67.

12. See ROSSI, *supra* note 10, at 22.

13. See Jim Baumohl & Kim Hopper, *Redefining the Cursed Word: A Historical Interpretation of American Homelessness*, in *HOMELESSNESS IN AMERICA* 10 (Jim Baumohl ed., 1996).

14. See, e.g., KUSMER, *supra* note 10, at 239-42 (describing differences between the "old" homeless and the "new" homeless, who began to appear in the mid-1970s); cf. BURT ET AL., *supra* note 3, at 3-4 (noting that, in leading studies of the 1950s and 1960s, homelessness was equated with living outside family units, whereas today its meaning is linked more closely to lack of housing or to living in shelters specifically provided for homeless people).

15. See Baumohl & Hopper, *supra* note 13, at 10.

16. See BURT ET AL., *supra* note 3, at 10.

single women and families.¹⁷ The term “the new homeless” has been used to describe this new, more diverse homeless population.¹⁸ The past two decades have seen an unprecedented expansion of national media attention, legal activity, government programs, and not-for-profit service providers.

A. Defining the Term and Estimating the Number

The term “homeless” is itself of recent origin, purportedly coined by advocates in late 1970s to describe the troubling phenomenon of countless individuals, mostly adult males, sleeping on the streets, in parks, and in other public places.¹⁹ Broad definitions of the term include not only those people living on the streets and in shelters, but also those who, lacking a home of their own, are doubled-up with relatives or friends.²⁰ A narrower, more commonly used definition limits homelessness to those individuals who lack a fixed and regular address and whose primary night-time residence is a public or private place “not designed for, or ordinarily used as, a regular sleeping accommodation for human beings,” or a shelter or similar facility designed to provide “temporary living accommodations” for persons with no other residence.²¹ How the term is defined has important consequences, affecting popular sentiment, the allocation of public resources, and the delivery of care by service providers.²² The term has also proven useful to advocates in arousing public concern and fighting for the right to shelter.²³ Some commentators note, however, that it has also shifted the focus away from those not literally “homeless,” but nonetheless

17. See Rossi, *supra* note 10, at 34-35.

18. Gary Blasi, *Advocacy and Attribution: Shaping and Responding to Perceptions of the Causes of Homelessness*, 19 ST. LOUIS U. PUB. L. REV. 207, 218 (2000).

19. JAMES D. WRIGHT, ADDRESS UNKNOWN: THE HOMELESS IN AMERICA 19-21 (1989).

20. *Id.* at 27-28; see Peter H. Rossi & James D. Wright, *The Urban Homeless: A Portrait of Dislocation*, 501 ANNALS AM. ACAD. POL. & SOC. SCI. 132, 134 (1989) (using a definition of homelessness that included the “literally homeless” and the “precariously, or marginally housed persons” with a tenuous or temporary claim to a dwelling of marginal adequacy).

21. See McKinney-Vento Homeless Assistance Act, *renamed*, Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. § 11301 (1995); BURT ET AL., *supra* note 3, at 6 (noting that the official definition narrows the homeless to “a fairly small proportion of the precariously housed or unhoused population”).

22. See, e.g., Rossi, *supra* note 10, at 45; see also KUSMER, *supra* note 10, at 4 (noting that counting only those “without domicile” underestimates the level of homelessness in society).

23. See Lucie E. White, *Representing “The Real Deal,”* 45 U. MIAMI L. REV. 271, 291-92 (1990-91).

with significant shelter problems,²⁴ and limited the growth of more broadly based anti-poverty coalitions.²⁵ The use of the term can also obscure just how diverse the homeless population is in its demographic composition and legal needs.

Estimating the size of the homeless population has been a significant source of controversy since homelessness galvanized national attention over two decades ago.²⁶ Estimates vary depending on the methodology used, including whether a particular homeless count is measured on a given day or over a period of time.²⁷ In the late 1970s, advocate Mitch Snyder claimed that over one million people were homeless; in 1982, he and Mary Ellen Hombs raised their estimate to between two to three million.²⁸ Some social scientists contended that those figures were exaggerated.²⁹ A 1984 study by the United States Department of Housing and Urban Development ("HUD") estimated that between 250,000 to 350,000 people were homeless;³⁰ a 1987 study by the Urban Institute put the number at between 500,000 and 600,000 people;³¹ a 1990 national survey based on telephone interviews of over 1,500 adults estimated that

24. *See id.* at 300.

25. Gary Blasi, *And We Are Not Seen: Ideological and Political Barriers to Understanding Homelessness*, 37 AM. BEHAV. SCIENTIST 563, 564 (1994) (suggesting that advocates should have fought for the rights of all those living in extreme poverty, rather than focusing only on those who were homeless).

26. *See* BURT ET AL., *supra* note 3, at 24 (calling estimates of the number of homeless people "political footballs").

27. *See* Nat'l Coalition for the Homeless, *How Many People Experience Homelessness?*, available at <http://www.nationalhomeless.org/numbers.html> (last visited Mar. 15, 2003). In addition, studies often fail to count accurately the numerous homeless people who are not in places researchers can easily locate. *See id.*; *see also* Rossi, *supra* note 10, at 46-52 (stating that not only do census counts often miss homeless people, but also that those attempting to count the homeless face other problems, such as the transience of the homeless population and difficulty identifying who is homeless).

28. CHRISTOPHER JENCKS, *THE HOMELESS* 1-2 (1994); *see* VICTORIA RADER, *SIGNAL THROUGH THE FLAMES: MITCH SNYDER AND AMERICA'S HOMELESS* 144 (1986) (describing the role of Snyder, Hombs, and others at the Center for Creative Non-Violence in raising public awareness about homelessness).

29. *See, e.g., id.* at 1-2 (suggesting that Snyder knew that statement was inaccurate when he made it).

30. *See* MARTHA R. BURT, *OVER THE EDGE, THE GROWTH OF HOMELESSNESS IN THE 1980s*, at 211 (1992). The HUD study was not without critics of its own. *See, e.g.,* Kim Hopper, *Whose Lives Are These Anyway?*, 17 URB. & SOC. CHANGE REV. 12, 12-13 (1984). The study also sparked litigation over its methodology. *See generally* Cmty. for Creative Non-Violence v. Pierce, 814 F.2d 663 (D.C. Cir. 1987).

31. BURT, *supra* note 30, at 211.

8.5 million people were homeless at some point during the period from 1985 to 1990.³²

Dennis P. Culhane's "path-breaking" study of turnover rates in shelters in New York City and Philadelphia, which produced an unduplicated count of the actual number of homeless people in city shelter systems over a period of time, revealed that three percent of Philadelphia's population used the public shelter system between 1990 and 1992, and that three percent of New York's population received shelter during the same period.³³ The work of Culhane and others conclusively demonstrated that homelessness was a much more widespread problem than the government had previously acknowledged.³⁴ A recent study now estimates that between 700,000 to 800,000 people are homeless each night and that between 2.5 to 3.5 million people experience homelessness each year.³⁵ The recent economic downturn, coupled with the impact of federal welfare reform, appears to have caused another sharp jump in homelessness.³⁶ Yet, debate continues over the number of homeless people who remain outside the growing network of shelter systems.³⁷

Even more debate rages over the causes of homelessness than the number of homeless people. These debates are not merely academic exercises, but influence how scarce public and private resources should be directed. Although the homeless population

32. Bruce G. Link et al., *Lifetime and Five-Year Prevalence of Homelessness in the United States*, 65 AM. J. ORTHOPSYCHIATRY 347, 353 (1995). This same study estimated that approximately 13.5 million adults, or 7.4 percent of the adult population, had at some point in their lives been "literally homeless," which was defined as "street and shelter" homelessness. *Id.*

33. See Dennis Culhane et al., *Public Shelter Admission Rates in Philadelphia and New York City: Implications of Turnover for Sheltered Population Counts*, 5 HOUSING POL'Y DEBATE 107, 107-40 (1994).

34. See Celia W. Dugger, *Study Says Shelter Turnover Hides Scope of Homelessness*, N.Y. TIMES, Nov. 16, 1993, at A1; see also Dennis P. Culhane, *Defining, Counting, and Tracking the Homeless Institution*, in UNDERSTANDING HOMELESSNESS: NEW POLICY AND RESEARCH PERSPECTIVES 5, 7 (Dennis P. Culhane & Steven P. Hornburg eds., 1997).

35. See NAT'L ALLIANCE TO END HOMELESSNESS, A PLAN: NOT A DREAM—HOW TO END HOMELESSNESS IN TEN YEARS 3 (2000), available at <http://www.naeh.org/pub/tenyear/10yearplan.pdf> (last visited Mar. 15, 2003).

36. See, e.g., Mirta Ojito, *Advocacy Group Says Homeless Are Breaking Shelter Records*, N.Y. TIMES, Nov. 20, 2001, at D8 (noting that over 29,000 people were sleeping in New York City's shelters nightly, the highest number in the city's history).

37. See Greg Retsinas, *City Says 1,780 Homeless are Sleeping on Manhattan Streets*, N.Y. TIMES, Mar. 28, 2003, at D8 (discussing controversy over recent attempt to count the number of homeless people on New York City streets).

defies easy generalization,³⁸ years of research and experience indicate several patterns. Single adult men still constitute a majority of homeless Americans,³⁹ although families with children represent one of the fastest growing segments of the homeless population,⁴⁰ making up about one-quarter of the homeless population on a given day.⁴¹

Studies conducted by the National Institutes of Mental Health ("NIMH") during the mid-1980s estimated that twenty to twenty-five percent of homeless single adults had lifetime histories of serious mental illness;⁴² more recent research places the number as high as thirty percent.⁴³ Alcohol and chemical dependency are also significant among homeless people, particularly homeless men.⁴⁴ Furthermore, about half of those with serious mental illnesses also have substance abuse disorders.⁴⁵ Yet, while rates of lifetime mental illness among the homeless are three to five times greater

38. Robert Rosenheck et al., *Special Populations of Homeless Americans*, in U.S. DEP'T OF HOUS. & URBAN DEV. & U.S. DEP'T OF HEALTH AND HUMAN SERVS., PRACTICAL LESSONS: THE 1998 NATIONAL SYMPOSIUM ON HOMELESSNESS RESEARCH 2-1, 2-2 (Linda B. Forsburg & Deborah L. Dennis eds., 1999) [hereinafter PRACTICAL LESSONS].

39. See U.S. Conference of Mayors, A Status Report on Hunger and Homelessness in American Cities, 2000: A 25-City Survey ii (2000) ("[E]stimat[ing] that, on average, single men constitute 44 percent of the homeless population, families with children 36 percent, single women 13 percent and unaccompanied minors seven percent."), available at <http://www.usmayors.org/uscm/hungersurvey/2000/hunger2000.pdf> (last visited Mar. 15, 2003); see also BURT, *supra* note 30, at 13 (estimating that single men constituted seventy-three percent of the adult urban homeless service-using population in 1987).

40. See Nina Bernstein, *Use of Shelters By Families Sets Record in New York*, N.Y. TIMES, Aug. 1, 2001, at A1; Jennifer Egan, *To Be Young and Homeless*, N.Y. TIMES, Mar. 24, 2002, at G32; Rosenheck et al., *supra* note 38, at 2-10 (estimating that families with children now comprise thirty-six percent of the total number of homeless people); Nancy Wright, *Not in Anyone's Backyard: Ending the "Contest of Nonresponsibility" and Implementing Long-Term Solutions to Homelessness*, 2 GEO. J. FIGHTING POVERTY 163, 170-71 (1995).

41. See BURT, *supra* note 30, at 16.

42. See ROSSI, *supra* note 10, at 146 (describing study indicating that one in four Chicago homeless had at least one episode of hospitalization in a psychiatric institution); Rosenheck et al., *supra* note 38, at 2-17.

43. Maria Foscarinis, *Downward Spiral: Homelessness and Its Criminalization*, 14 YALE L. & POL'Y REV. 1, 6 (1996) (citing FED. TASK FORCE ON HOMELESSNESS & SEVERE MENTAL ILLNESS, OUTCASTS ON MAIN STREET 7-13 (1992)); see JENCKS, *supra* note 28, at 24 (estimating that about one-third of all homeless people have severe mental illnesses).

44. See, e.g., BURT, *supra* note 30, at 110-11; ROSSI, *supra* note 10, at 156 (describing studies during 1980s showing prevalence of alcoholism as about one-third of the total homeless population).

45. See Rosenheck et al., *supra* note 38, at 2-17.

than rates in the general population, the majority of homeless people do not have a serious mental illness.⁴⁶

Demographic research has yielded other important findings, identifying increasing numbers of homeless women (including those without children),⁴⁷ youth,⁴⁸ the elderly,⁴⁹ and minority groups, particularly African-Americans and Latinos.⁵⁰ The traditional stereotype of a homeless individual was a single, white, male adult addicted to alcohol; today, however, the homeless population is extremely diverse.⁵¹ On a given day, the adult population using homeless assistance programs consists of: single men (sixty-one percent); single women (fifteen percent); households with children (fifteen percent); people with another adult, but not with children (nine percent).⁵²

The common thread connecting these demographic categories—whether based on gender, age, family situation, mental health status, or racial or ethnic background—is extreme poverty.⁵³ In 1994, a total of 38.1 million Americans fell below the federal poverty

46. *See id.*

47. *See id.* at 2-9 (concluding that women now comprise one-fifth of the overall homeless population).

48. *See* Marjorie J. Robertson & Paul A. Toro, *Homeless Youth: Research, Intervention, and Policy*, in PRACTICAL LESSONS, *supra* note 38, at 3 (noting that the size of the homeless youth population, defined as ages twelve to seventeen, is substantial and widespread; estimating that the annual prevalence of literal homelessness among this age group is 7.6 percent, or 1.6 million youth in a particular year).

49. *See* Rosenheck et al., *supra* note 38, at 2-7 to 2-8 (noting that while the proportion of older persons in the total homeless population has declined in recent years, the number of homeless elders, aged fifty and above, has increased and will likely increase further as “increasing numbers of baby-boomers reach older adulthood.”); *see also* Nat’l Coalition for the Homeless, *Homelessness Among Elderly Persons*, at <http://www.nationalhomeless.org/causes.html> (last visited Mar. 15, 2003).

50. *See* Rosenheck et al., *supra* note 38, at 2-13 (“Blacks and Latinos in America are far more likely than other Americans to be poor and therefore, more likely to be homeless.”). The relatively high percentage of African-Americans who are homeless is also a product of the gap in wealth between African-Americans and whites, the loss of jobs in the inner city, and housing segregation. *See id.* at 2-14 to 2-15.

51. *See generally* Kim Hopper & Jill Hamburg, *The Making of America’s Homeless: From Skid Row to the New Poor, 1945-1984*, in CRITICAL PERSPECTIVES ON HOUSING 13 (R.G. Bratt et al. eds., 1986).

52. *See* BURT ET AL., *supra* note 3, at 57.

53. *See* Foscarnis, *supra* note 43, at 6; White, *supra* note 23, at 276; *see also* BURT ET AL., *supra* note 5, at 55 (concluding that extreme poverty is the most important predictor as to whether an individual is homeless); Rossi, *supra* note 10, at 8; *cf.* Wes Daniels, *Symposium on Law and the Homeless: An Introduction*, 45 U. MIAMI L. REV. 261, 262 (1990-91) (“Homelessness represents the far end of a spectrum, and the tip of an iceberg to which people have paid more attention than to the serious underlying problems of which homelessness is simply one symptom.”).

line, 5.6 million more than in 1989.⁵⁴ Indeed, homeless people are poorer today than ever before.⁵⁵ Although in 2000 the overall poverty level dropped to record low rates, the average poor person continued to fall further below the poverty line.⁵⁶ In addition, the income gap between high- and low-income families remained at or near the highest levels since before World War II.⁵⁷ The shrinkage of government assistance programs like welfare and food stamps partly explains these trends.⁵⁸

While extreme poverty does not necessarily cause people to become homeless, it makes them more vulnerable to homelessness,⁵⁹ which may be triggered by what to others might seem only temporary setbacks, such as the loss of a job. Indeed, between five and ten percent of poor people experience homelessness during a given year.⁶⁰ Thus, an understanding of the close connection between poverty and homelessness must inform and drive homeless legal advocacy.

B. Causes of Homelessness

Beliefs about the causes of homelessness tend to reflect fundamentally different attitudes towards social welfare policy and the role of the state in society. Generally, liberals emphasize how the shortage of affordable housing, changes in federal housing policy, and the reduction in the purchasing power of public benefits have all led to higher rates of homelessness. Conservatives, by contrast, stress personal failures like mental illness, alcoholism, and drug abuse in explaining the persistence of homelessness. Thus, while liberals favor government intervention through expanding housing and cash assistance programs, conservatives believe such intervention cannot help and may indeed worsen the problem by inhibiting individual initiative and responsibility.⁶¹

54. See Foscarinis, *supra* note 43, at 10.

55. See, e.g., Rossi, *supra* note 10, at 40 (noting that the new homeless in Chicago have one-third the income level of the homeless in 1958).

56. See Press Release, Center on Budget and Policy Priorities, Poverty Rates Fell in 2000 As Unemployment Reached 31-Year Low (Sept. 26, 2001), *available at* <http://www.centeronbudget.org/9-25-01pov.htm> (last visited Mar. 15, 2003); see also Genaro C. Armas, *Census: Rich got Richer in the 90s*, ASSOC. PRESS, June 4, 2002 (noting that the poverty rate increased in many states despite a decade of economic prosperity).

57. See Press Release, Center on Budget and Policy Priorities, *supra* note 56.

58. See *id.*

59. See Rossi, *supra* note 10, at 77.

60. See BURT ET AL., *supra* note 5, at 116-17.

61. See White, *supra* note 23, at 279-81. The public is similarly divided over the primary cause of poverty, with roughly half saying that a person is poor due to lack of

In fact, there is a growing consensus that both structural and individual factors play a role in causing homelessness.⁶² While structural factors make people more vulnerable to becoming homeless, personal factors often determine who is pushed over the edge. On the other hand, while there are relatively higher rates of chemical dependency and mental illness among homeless people,⁶³ the issue is why those problems lead to homelessness in some people, but not others. Understanding the complex interplay of these multiple causes should help shape future homeless legal advocacy. This Section identifies some of these causes.

1. *Structural Changes in the Economy*

The growing inequality and poverty in today's global economy is an important cause of homelessness.⁶⁴ The loss of relatively high paying manufacturing jobs following the recession of the early 1980s, and their replacement with lower paying, less-stable service jobs, has contributed to the spread of homelessness.⁶⁵ Low-wage workers have been affected dramatically; for example, the real value of the minimum wage (adjusted for inflation) declined over eighteen percent from 1979 to 1997,⁶⁶ making housing unaffordable

individual effort, and the other half blaming poverty on external circumstances beyond a person's individual's control. See DEMOS, *NEW OPPORTUNITIES? PUBLIC OPINION ON POVERTY, INCOME INEQUALITY AND PUBLIC POLICY: 1996-2001*, at 2 (2001), available at <http://www.demos-usa.org> (last visited Mar. 15, 2003).

62. See BURT ET AL., *supra* note 3, at 8; see also STEVEN VANDERSTAAY, *STREET LIVES: AN ORAL HISTORY OF HOMELESS AMERICANS* 72-77 (1992) (noting that homelessness often results from the interaction of economic forces and personal factors).

63. See *supra* notes 44-45 and accompanying text.

64. I. Susser, *The Construction of Poverty and Homelessness in U.S. Cities*, 25 ANN. REV. ANTHROPOLOGY 411, 412-13 (1996); see JOEL F. HANDLER & YEHESEKEL HASENFELD, *WE THE POOR PEOPLE: WORK, POVERTY, AND WELFARE* 13 (1997) ("[T]he gap between the rich and the poor in the United States is the widest since the end of World War II.").

65. See, e.g., BURT, *supra* note 30, at 78-79 (noting that half the jobs created between 1979 to 1987 were low-wage jobs); KUSMER, *supra* note 10, at 240 ("Deindustrialization and the shift to a high-tech and service economy eliminated many unskilled or semi-skilled jobs, with disastrous effects on factory workers and young people entering the labor force without adequate education.").

66. Nat'l Coalition for the Homeless, *Why Are People Homeless?*, at <http://www.nationalhomeless.org/causes.html> (last visited Mar. 15, 2003); see LAWRENCE MISHLE & DAVID M. FRANKEL, *THE STATE OF WORKING AMERICA* 3-4 (1991) (describing declining incomes among low wage workers during the 1980s).

for many workers. Moreover, many of these low-wages jobs remain inaccessible to the extremely poor and homeless.⁶⁷

2. *The Lack of Affordable Housing*

A central cause of increased homelessness is the decline in affordable housing, generally defined as a unit available for thirty percent of a household's income.⁶⁸ The period from 1973 to 1993 saw the disappearance of 2.2 million low-rent units from the market through abandonment, conversion to more expensive apartments, and rising costs.⁶⁹ By 1995, the number of low-income renters exceeded the number of low-cost rental units by 5.4 million units.⁷⁰ In total, the number of affordable housing units for families with extremely low incomes (thirty percent of area median income), has declined by over 370,000 units since 1991.⁷¹ Because so many poor families spend over thirty percent of their income on housing, any slight downturn in their economic circumstances can precipitate the downward spiral towards homelessness.⁷²

Also, only about one-third of low-income renter households receive any housing subsidies.⁷³ The number of poor families receiving federally subsidized housing has decreased over time.⁷⁴ The continued spread of homelessness is hardly surprising given the rising cost of housing, the increasing rent burden of poor families,⁷⁵ the overall decline of the inexpensive housing stock (particularly in large cities)⁷⁶ the destruction of cheap housing, including SROs

67. See Christina Victoria Tusan, Note, *Homeless Families From 1980-1996: Casualties of Declining Support for the War on Poverty*, 70 S. CAL. L. REV. 1141, 1168 (1997).

68. JENNIFER DASKAL, CTR. ON BUDGET & POLICY PRIORITIES, IN SEARCH OF SHELTER: THE GROWING SHORTAGE OF AFFORDABLE RENTAL HOUSING 9-12 (1998).

69. *Id.* at 1.

70. See *id.*

71. See John J. Ammann, *Housing Out the Poor*, 19 ST. LOUIS U. PUB. L. REV. 309, 311 (2000).

72. See Rossi, *supra* note 10, at 9; see also Michael H. Schill & Benjamin P. Scafidi, *Housing Conditions and Problems in New York City*, in HOUSING AND COMMUNITY DEVELOPMENT IN NEW YORK CITY: FACING THE FUTURE 11, 33 (Michael H. Schill ed., 1999) [hereinafter HOUSING AND COMMUNITY DEVELOPMENT] (noting that the affordability crisis is predominantly a crisis for the poor in New York City).

73. See DASKAL, *supra* note 68, at 4.

74. See Tusan, *supra* note 67, at 1176.

75. See, e.g., BURT, *supra* note 30, at 46-47 (noting that the proportion of poor renters paying more than thirty percent of income is growing and that such renters often pay over half of their income for rent alone).

76. See Rossi, *supra* note 10, at 182; see also Michael S. Carliner, *Homelessness: A Housing Problem?*, in THE HOMELESS IN CONTEMPORARY SOCIETY 119 (Richard D. Bingham et al. eds., 1989) (describing the shift of older urban housing stock to higher

and rooming houses,⁷⁷ the relative decline in units created by the federal government starting in the 1980s,⁷⁸ and the decline in federal subsidies such as the Section 8 Rental Assistance Program.⁷⁹ “Opt-outs” from HUD contracts continue to erode the number of federally subsidized units.⁸⁰ Meanwhile, waiting lists for HUD-assisted housing grow longer.⁸¹

Increasing numbers of people do not have the income, whether through wages or government cash transfer programs, to secure housing.⁸² In 1991, there were eight million very poor renters, but only three million units were available to them;⁸³ a more recent study found that the number of rental units available to extremely low-income families dropped by five percent between 1991 and 1997, a decline of over 370,000 units.⁸⁴ While the federal government has responded to homelessness with some emergency assistance, it has failed to forge a national commitment to help establish affordable housing for the poor.⁸⁵ Affordable housing may not

income groups, rather than to poor people, because of gentrification and the increase of affluent non-family households and childless couples).

77. See Rossi, *supra* note 10, at 182 (citing a study that found that 18,000 single-person dwelling units in SROs and small apartment buildings disappeared between 1973 to 1984); Foscarinis, *supra* note 43, at 8 (finding that the number of people living in hotels and rooming houses declined from 640,000 in 1960 to 137,000 in 1990); Barrett A. Lee, *The Disappearance of Skid Row: Some Ecological Evidence*, 16 URB. AFF. Q. 81, 81-107 (estimating that urban renewal in the 1960s and later conversation of rejuvenation of neighborhoods led to the national loss of approximately 1,116,000 units in SROs and accommodations in boarding or lodging houses); cf. JENCKS, *supra* note 28, at 74 (contending that the destruction of skid row neighborhoods made it harder to create housing for the poor when their numbers and demand began to grow again in the 1980s).

78. See BURT, *supra* note 30, at 32 (contrasting 1.5 million rental units added in the 1970s through federal programs, which represents thirty-one percent of the total growth in rental stock during that decade, with the 877,000 units added in the 1980s, which represents fourteen percent of the rental units added in that period).

79. See Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 GEO. J. POVERTY L. & POL’Y 35, 39 (2002).

80. See, e.g., Victor Bach, *The Future of HUD-Subsidized Housing: The New York City Case*, in HOUSING AND COMMUNITY DEVELOPMENT, *supra* note 72, at 157.

81. U.S. DEP’T OF HOUS. & URBAN AFFAIRS, WAITING IN VAIN: AN UPDATE ON AMERICA’S HOUSING CRISIS 7-11 (1999); Ammann, *supra* note 71, at 310 (noting that a recent HUD survey of forty public housing authorities found almost one million families on the waiting lists for public housing and Section 8 rental assistance).

82. See White, *supra* note 23, at 288 (describing the growth of the “shelter poor”).

83. INTERAGENCY COUNCIL ON THE HOMELESS, PRIORITY: HOME! THE FEDERAL PLAN TO BREAK THE CYCLE OF HOMELESSNESS 22-23 (1994).

84. See OFFICE OF POLICY DEV. RESEARCH, U.S. DEP’T OF HOUS. & URBAN DEV., RENTAL HOUSING ASSISTANCE—THE WORSENING CRISIS: A REPORT TO CONGRESS ON WORST CASE HOUSING NEEDS 22 (2000).

85. See White, *supra* note 23, at 296.

alone be sufficient to end homelessness in every case (many homeless people need services in the community as well), but it is always a necessary part of the solution.⁸⁶

3. *Increasing Restrictions on Public Assistance*

Restrictions on eligibility for public assistance and the relative decline in grant levels in the past two decades⁸⁷ have contributed to homelessness by reducing the purchasing power of the poor.⁸⁸ A state's payments under Aid to Families with Dependent Children ("AFDC")—the former federal welfare program—for a family of three declined in real terms by forty-seven percent between 1970 and 1994.⁸⁹ State general assistance payments for single adults have also sharply declined, and, in a few states, have been cut altogether.⁹⁰ Indeed, the fact that single adults receive lower grants under general assistance programs than families under welfare helps explain why, traditionally, more single adults have been homeless than families.⁹¹ The decline in the real value of cash assistance, coupled with the loss of low-paying unskilled jobs, has made it particularly difficult for at-risk populations, such as the mentally ill and chemically dependent, to stay housed.⁹² Absent receipt of a housing subsidy, welfare payments alone are generally insufficient for someone to leave homelessness for permanent housing. Indeed, even a recipient of Supplemental Security In-

86. Cf. Marybeth Shinn et al., *Predictors of Homelessness Among Families in New York City: From Shelter Request to Housing Stability*, 88 AM. J. PUB. HEALTH 1651, 1655 (1998) (showing that subsidized housing was the critical factor in families' remaining in permanent housing after leaving shelters).

87. This refers principally to: federal welfare, formerly Aid to Families with Dependent Children ("AFDC"), now Temporary Assistance to Needy Families ("TANF"); general assistance (or general relief) provided by the states to those who do not qualify for TANF funds, such as single adult men; and Supplemental Security Income ("SSI"), the federal program providing cash assistance to disabled, blind, or elderly people who meet income and resource requirements.

88. Nancy Morawetz, *Welfare Litigation to Prevent Homelessness*, 16 N.Y.U. REV. L. & SOC. CHANGE 565, 566-67 (1987-88); Wright, *supra* note 40, at 176 (discussing evidence linking cuts in public assistance to a rise in homelessness); *see also* BURT, *supra* note 30, at 63, 84-85; Rossi, *supra* note 10, at 143 (noting the importance of welfare as a guard against homelessness).

89. Mark Greenberg & Jim Baumohl, *Income Maintenance: Little Help Now, Less on the Way*, in HOMELESSNESS IN AMERICA, *supra* note 13, at 68.

90. *See id.* at 74.

91. *See* BURT ET AL., *supra* note 3, at 130.

92. *See* BURT, *supra* note 30, at 212-13; JENCKS, *supra* note 28, at 93 (arguing that "the main problem facing single mothers during the 1980s was legislative stinginess," and noting that for single mothers with incomes below \$10,000 who lived in unsubsidized housing, real rents rose by thirteen percent during this period, while welfare checks rose by far less).

come ("SSI"), whose monthly cash grant is higher than that of welfare recipients, must spend, on average, almost seventy percent of her monthly grant to rent a one-bedroom apartment.⁹³

The 1996 federal welfare reform act⁹⁴ has intensified the problem of inadequate income and increased the risk of homelessness among at-risk populations. The act replaces the federal entitlement to welfare benefits with block grants to the states under the Temporary Assistance to Needy Families ("TANF") program.⁹⁵ It also imposes a five-year lifetime cap on receipt of assistance, mandates strict work requirements,⁹⁶ and affords greater discretion to states and localities in administering benefits and determining eligibility rules,⁹⁷ a process generally known as "devolution." These changes have made it more difficult for people both to obtain and maintain welfare benefits.⁹⁸ The evidence thus far indicates that while more families are moving from welfare to work, they are not escaping poverty because of low wages and inadequate work supports, including childcare.⁹⁹ Indeed, welfare caseloads declined forty-two percent between 1993 and 1998, but the number of households with incomes below fifty percent of the poverty level has increased, notwithstanding the strong economy during that period.¹⁰⁰ While the impact of the 1996 reforms on homelessness has not yet been fully determined, existing evidence indicates that the housing problems of families leaving welfare are growing worse.¹⁰¹

93. See Nat'l Coalition for the Homeless, *supra* note 66.

94. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.).

95. See 42 U.S.C. § 607 (2002).

96. See *id.* §§ 607-608 (detailing mandatory work requirements and sanctions for non-compliance).

97. See *id.* § 617.

98. See Matthew Diller, *The Revolution in Welfare Administration Rules, Discretion, and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121, 1126 (2000).

99. CHILDREN'S DEF. FUND & NAT'L COALITION FOR THE HOMELESS, WELFARE TO WHAT: EARLY FINDINGS ON FAMILY HARDSHIP AND WELL-BEING 16-17 (1998); Nina Bernstein, *In Control Group, Most Welfare Recipients Left the Rolls Even Without Reform*, N.Y. TIMES, Feb. 29, 2002, at B4; Peter Edelman, *Reforming Welfare—Take Two*, NATION, Feb. 4, 2002, available at <http://www.thenation.com/doc.mhtml?i=20020204&s=edelman&c=1> (last visited Mar. 15, 2003).

100. See Diller, *supra* note 98, at 1123.

101. See PAMELA LOPREST, URBAN INST., HOW ARE FAMILIES THAT LEFT WELFARE DOING? A COMPARISON OF EARLY AND RECENT WELFARE LEAVERS I (2001), available at http://newfederalism.urban.org/pdf/anf_b36.pdf (last visited Mar. 15, 2003). The reauthorization of TANF in 2002 has provided an opportunity for proposals to implement changes that makes housing assistance part of welfare policy. See BARBARA SARD & MARGY WALLER, THE BROOKINGS INST.: CTR. ON URBAN AND METRO. POLICY & THE CTR. ON BUDGET & POLICY PRIORITIES, HOUSING STRATE-

4. *Increasing Rates of Incarceration*

Rapidly rising rates of incarceration over the past two decades, coupled with the elimination of programs to prepare prisoners for release into the community,¹⁰² such as prison-based higher education programs,¹⁰³ have also contributed to homelessness.¹⁰⁴ Also, the lack of discharge planning or services causes many inmates to become homeless when they are released from prison, particularly those inmates with a mental illness.¹⁰⁵

A criminal conviction leads to a range of collateral consequences involving the loss of political, civil, and economic rights¹⁰⁶ that can contribute to homelessness. A criminal conviction means vastly decreased employment opportunities,¹⁰⁷ including exclusion from jobs, many requiring a professional license.¹⁰⁸ Other collateral consequences involve potential exclusion from federal housing programs,¹⁰⁹ especially where the offense involves drug-related activ-

GIES TO STRENGTHEN WELFARE POLICY AND SUPPORT WORKING FAMILIES 1 (2002), available at <http://www.brook.edu/dybdocroot/es/urban/publications/sardwallerhousingwelfareexsum.htm> (last visited Mar. 15, 2003).

102. See, e.g., HEATHER BARR, PRISONS AND JAILS: HOSPITALS OF LAST RESORT 49-53 (1999) (discussing the connection between the absence of discharge planning for mentally ill prison inmates and homelessness).

103. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 20411, 108 Stat. 1796, 1828 (codified as amended at 20 U.S.C. § 1070a(b)(8) (1994)) (prohibiting Pell Grant awards to prisoners).

104. See Rosenheck et al., *supra* note 38, at 2-19 (noting that an estimated twenty percent to sixty-six percent of homeless people have been arrested in the past).

105. See, e.g., Nina Bernstein, *Back on the Streets Without a Safety Net*, N.Y. TIMES, Sept. 13, 1999, at B1 (describing release of inmates from Rikers Island jail in New York City).

106. Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL'Y REV. 153, 154 (1999) ("Among [the consequences] are the loss of voting rights and the right to run for office, rejection from jury service, prohibition on certain public benefits, and the ban on select professional licenses.").

107. See Rosst, *supra* note 10, at 144.

108. See Demleitner, *supra* note 106, at 156.

109. See, e.g., 24 C.F.R. § 960.203(c) (2001) (authorizing local public housing authorities to consider an applicant's prior criminal activity in determining his eligibility for public housing).

ity,¹¹⁰ and the federal welfare and food stamp programs where the illegal activity constitutes a drug-related felony.¹¹¹

5. *Mental Illness*

Another important cause of homelessness is mental illness. While mental illness may be an important factor in understanding homelessness, it must be viewed not in isolation, but in the context of changes in mental health policy. Proportionally no more Americans suffer from mental illness now than a generation ago; yet, mentally ill people make up an increasing proportion of the homeless population.¹¹² Many mentally ill people become homeless after their discharge from health care institutions to the street or shelters.¹¹³ The McKinney-Vento Homeless Assistance Act ("McKinney Act")¹¹⁴ places considerable emphasis on mental illness through funding for supportive housing and homeless outreach programs.¹¹⁵

As the foregoing discussion indicates, homelessness is a complex problem, and cannot be solved solely by lawyers; yet, legal advocacy can make a difference. Both direct experience and social science research suggest that poverty lawyers should focus on overcoming the various barriers to obtaining permanent housing. They also indicate that legal advocacy should, where possible, be integrated into a more holistic approach that focuses on areas such

110. See *id.* § 960.204 (setting forth provisions for denying admission to public housing based on an applicant's engagement in drug-related criminal activity); *id.* § 982.553 (setting forth provisions for denying admission or terminating assistance under Section 8 rental assistance program to individuals or families based on drug-related criminal activity). Illegal drug-related activity can also lead to eviction of existing tenants of federally subsidized housing, even if the tenant did not know about or consent to such activity. See *Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 127-28 (2002).

111. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (to be codified at 21 U.S.C. § 862a); *Recent Legislation*, 110 HARV. L. REV. 983, 983-84 (1997). States, however, may opt out or modify the drug felon bar by passing legislation making clear they are choosing to do so. See 21 U.S.C. § 862a(d) (1999). To date, at least thirty states have either eliminated or modified the ban. See Amy E. Hirsch, *U.S. Drug Laws: The New Jim Crow?: Bringing Back Shame: Women, Welfare, and Criminal Justice*, 10 TEMPLE POL. & CIV. RTS. L. REV. 417, 419 (2001).

112. See BURT, *supra* note 30, at 119-20, 212-13.

113. See Sidney D. Watson, *Discharges to the Streets: Hospitals and Homelessness*, 19 ST. LOUIS U. PUB. L. REV. 357, 358 (2000).

114. 42 U.S.C. § 11301 (a)(1)-(b)(3) (2003).

115. See Latisha R. Brown, *The McKinney Act: Revamping Programs Designed to Assist the Mentally Ill Homeless*, 33 COLUM. J.L. & SOC. PROBS. 235, 241-46 (2000) (describing federal programs under the McKinney Act).

as skills-building and job training, nutrition services, substance abuse counseling, and medical and mental health treatment.

The following part provides an overview of previous trends in homeless legal advocacy. It then suggests the continuing value of such advocacy as well as the need for new approaches.

II. OVERVIEW OF PRIOR LEGAL ADVOCACY

Prior homeless legal advocacy may be divided into two main periods: the efforts during the 1980s to establish a “right to shelter” and other basic needs; and the growing challenges since the 1990s to efforts to criminalize activities associated with homelessness.¹¹⁶ While responses to criminalization measures still remain a major focus of homeless rights advocacy,¹¹⁷ current efforts should also focus on long-term solutions, such as increasing access to affordable housing and topoverity and social service programs.¹¹⁸

A. Right to Shelter

The “right to shelter” cases of the late 1970s and early 1980s were brought at a time when homelessness was becoming increasingly visible in cities, including downtown areas. The growing numbers of people living on the streets was attracting significant media attention.¹¹⁹ For a generation unaccustomed to seeing such extreme poverty amid affluence, the sight of homeless people living on the streets provoked outrage at the situation and sympathy for the victims. Advocates sought to parlay these sentiments into concrete constitutional and statutory rights in cities across the country.

The landmark decision of a New York trial court in *Callahan v. Carey*,¹²⁰ represented the first significant legal recognition of a right to emergency shelter. After the trial court ruled in favor of the plaintiffs on a motion for a preliminary injunction based on a provision in the state constitution guaranteeing the aid, care, and

116. See Foscarinis, *supra* note 43, at 3.

117. See, e.g., Evelyn Nieves, *In Famous Tolerant City, Impatience with Homeless*, N.Y. TIMES, Jan. 18, 2002, at A14.

118. See Maria Foscarinis, *Homelessness and Human Rights: Towards An Integrated Strategy*, 19 ST. LOUIS U. PUB. L. REV. 327, 329 (2000).

119. See Geoffrey Mort, Note, *Establishing A Right to Shelter for the Homeless*, 50 BROOK. L. REV. 939, 941 n.4 (1984) (describing the media attention devoted to homelessness during the early 1980s).

120. No. 79-42582 (N.Y. Sup. Ct. Dec. 5, 1979), *reprinted in* N.Y. L.J., Dec. 11, 1979, at 10.

support of the needy,¹²¹ the plaintiffs and New York City entered into a consent decree requiring the city to provide overnight food and shelter to needy homeless men and to set forth basic standards for the shelters.¹²² In New York, the right to shelter was later extended to women¹²³ and families.¹²⁴ Advocates succeeded elsewhere in winning similar legal victories.¹²⁵ Advocates also successfully brought litigation in several states to increase the amount of housing assistance provided through state welfare grants.¹²⁶ The specter of increasing homelessness played a significant role in these cases.¹²⁷ In addition, advocates won other important legal victories including the right of homeless people to

121. N.Y. CONST. art. XVI, § 1.

122. *Carey*, No. 79-42582, *reprinted in* N.Y. L.J., *supra* note 120, at 10.

123. *Eldredge v. Koch*, 459 N.Y.S.2d 960, 961 (Sup. Ct.) (extending principles of the *Callahan* decree to homeless women on equal protection grounds), *rev'd on other grounds*, 469 N.Y.S.2d 744 (App. Div. 1st Dep't 1983).

124. *McCain v. Koch*, 511 N.E.2d 62, 63-67 (N.Y. 1987) (requiring that emergency shelter be provided and affirming the court order to permit placement in mass shelters).

125. *See, e.g., Hodge v. Ginsberg*, 303 S.E.2d 245, 247-50 (W. Va. 1983) (upholding right to emergency shelter, food, and medical care under adult protective services statute); Wes Daniels, "Derelicts," *Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates*, 45 BUFF. L. REV. 687, 691-93 (1997) (describing successful challenges to bureaucratic obstacles to access to public emergency shelter in a series of cases in California); *id.* at 692-93 (discussing the right to shelter in Philadelphia under local law); *see also* Mort, *supra* note 119, at 940 (noting that "[l]itigation has become the preferred tool of advocacy groups working to improve conditions for the homeless"). The United States Supreme Court has held, however, that the Constitution does not require the federal government to provide shelter for those citizens in need. *See Lindsey v. Normet*, 405 U.S. 56, 74 (1972) ("We are unable to perceive . . . any constitutional guarantee of access to dwellings of a particular quality").

126. *See, e.g., Mass. Coalition for Homeless v. Sec'y of Human Servs.*, 511 N.E.2d 603, 608-15 (Mass. 1987) (holding that the state welfare agency was required under state law to provide additional benefits to welfare recipients who could not otherwise afford housing with their welfare benefits); *Jiggetts v. Grinker*, 533 N.E.2d 570, 575 (N.Y. 1990) (holding that the social services commissioner must provide "adequate" shelter allowance for families on welfare that reflect housing costs in the city); *see also* Norma Rotunno, Note, *State Constitutional Social Welfare Provisions and the Right to Housing*, 1 HOFSTRA L. & POL'Y SYMP. 111, 123 (1996) (describing the successful use of social welfare provisions in state constitutions to combat homelessness and poverty). *But see* *Savage v. Aronson*, 571 A.2d 696, 712 (Conn. 1990) (holding that the reduction of emergency housing assistance did not violate the state constitution, even if individuals had no other permanent housing).

127. *See Mass. Coalition for Homeless*, 511 N.E.2d at 605 ("At the heart of the plaintiffs' grievance is the argument that many families receiving AFDC assistance are or may become homeless because AFDC grants are insufficient to permit them to afford adequate housing."); *Jiggetts*, 533 N.E.2d at 573 ("A schedule establishing assistance levels so low that it forces large numbers of families with dependent children into homelessness does not meet the statutory standard.").

vote,¹²⁸ and the right of families not to be separated and children placed in foster care on account of their homeless status.¹²⁹

While right to shelter litigation achieved some notable judicial victories and helped prompt policies creating and expanding emergency services, it did not carry the day.¹³⁰ Legal victories have since been narrowed¹³¹ and, in some places, eliminated.¹³² In New York City, where right to shelter litigation has had the greatest impact, a settlement was recently reached creating an independent special master panel with extensive powers including oversight and regular evaluation of the city's shelter system, decreasing court involvement, and authorizing the city to expel families from the shelter system if they refuse to accept suitable housing.¹³³ Moreover, the strategy of achieving a right to shelter through the courts has been criticized for failing to address the root causes of homelessness¹³⁴ and for tilting policy away from permanent housing and homeless prevention and towards ad hoc crisis intervention.¹³⁵

128. See *Pitts v. Black*, 608 F. Supp. 696, 710 (S.D.N.Y. 1984) (ordering New York City to allow homeless individuals without a fixed address to vote as long as they had a place they considered their "home base"); K. Scott Mathews, *Rights of the Homeless in the 1990s: What Role Will the Courts Play*, 60 UMKC L. REV. 343, 353-54 (1991) (describing litigation regarding residence requirements).

129. See *Martin v. Gross*, 524 N.Y.S.2d 121, 125 (Sup. Ct. 1987).

130. See EUGENE T. LOWE ET AL., U.S. CONFERENCE OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES 2001: A 27-CITY SURVEY ii, 11 (2001) (noting that more than thirty-seven percent of those people seeking shelter are unable to access it).

131. See *McCain v. Giuliani*, 676 N.Y.S.2d 151, 152 (App. Div. 1998) (imposing restrictions on the right to shelter).

132. Foscarinis, *supra* note 118, at 332 (noting that in Washington, D.C., the right to shelter was eliminated by legislation after city officials facing contempt orders sought changes in the law).

133. See Leslie Kaufman, *New York Reaches Deal to End 20-Year Legal Fight on Homeless*, N.Y. TIMES, Jan. 18, 2003, at A1. The city is also attempting to weaken the Callahan decree by granting shelters the right to evict single adults who fail to observe rules of conduct or comply with social service plans. See Susan Saulny, *City Pursuing Right to Evict From Shelters*, N.Y. TIMES, Mar. 1, 2003, at B1.

134. See Daniels, *supra* note 125, at 728-29; Ronald Slye, *Community Institution Building: A Response to the Limits of Litigation in Addressing the Problems of Homelessness*, 36 VILL. L. REV. 1035, 1050 (1991); White, *supra* note 23, at 296 (contrasting federal housing policy's goal of building homes and communities with federal homeless legislation's goal of crisis assistance and short-term emergency relief); see also BURT ET AL., *supra* note 3, at 242 (noting the findings of a HUD study that most shelters provided few services). Robert Hayes, the lead attorney for the plaintiffs in *Callahan*, believes that the litigation achieved only minor victories at significant expense, though he does note that it helped pressure New York City into transforming formerly abandoned buildings into permanent housing. See Robert M. Hayes, *Homelessness & The Legal Profession*, 35 LOY. L. REV. 1, 8 (1989).

135. See N.Y. CITY INDEP. BUDGET OFFICE, FISCAL BRIEF, GIVE 'EM SHELTER: VARIOUS CITY AGENCIES SPEND OVER \$900 MILLION ON HOMELESS SERVICES 1

Also, advocates in right to shelter litigation have tended to portray their homeless clients as helpless victims of larger structural forces, a stereotype that helped win early victories, but has since proven less successful.¹³⁶

On the other hand, right to shelter advocacy once seemed a promising option and reflected an attempt to force the government to deal with a worsening social problem.¹³⁷ Moreover, the victories were not hollow: shelter, food, and other emergency services were provided to innumerable homeless people through litigation;¹³⁸ in remaining right to shelter jurisdictions such as New York City, they helped force the government to deal humanely with the homeless population and prevent abuses.¹³⁹ Ultimately, however, a right to emergency shelter can only be part of a broader solution.

(2002); Peter W. Salsich, Jr., *Homelessness at the Millennium: Is the Past Prologue?*, 23 STETSON L. REV. 331, 333 (1994) (noting that the shelter system has "raised fears among homeless advocates that the shelter network would create a permanent cycle of dependency"); White, *supra* note 23, at 296; *see also* Tusan, *supra* note 67, at 1210-11 (arguing that shelters provide only emergency services and that more must be done to assist families to regain permanent housing); *cf.* KUSMER, *supra* note 10, at 245 (describing the focus during the 1980s and 1990s on emergency provision of shelter and food, rather than the kind of structural reforms necessary to lift people out of poverty). Criticisms have been aimed not merely at the right to shelter litigation, but more broadly at the expansion of shelters and accompanying services nationwide. *See, e.g.*, Nan Roman, *Why America Can End Homelessness in Ten Years*, 4 HOUSING FACTS & FIGURES, 2002, at 3.

Over the past 15 years we have developed a national infrastructure of shelters, soup kitchens, health clinics, and transitional housing that can largely manage people while they are homeless. But this system is unlikely to end homelessness because it does not address the front-end causes or the back-end solutions to the problem.

Id.

136. *See* Daniels, *supra* note 125, at 708 ("Although lawyers were able to win some significant litigation victories by portraying their homeless clients as unfortunate victims of forces beyond their control, this approach had significant risks, and carried the seeds of its own destruction."); White, *supra* note 23, at 292; *see also* MICHAEL B. KATZ, *THE UNDESERVING POOR* 192-94 (1986) (describing how early, idealized views of the homeless favored volunteerism over broad, sustained policy development).

137. *See, e.g.*, Melannie B. Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269, 304-05 (1997). *But see* JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM* 22-25 (1978) (discussing limits of lawyers' efforts to seek social change through litigation in various areas).

138. *See* Stephen Wizner, *Homelessness: Advocacy and Social Policy*, 45 U. MIAMI L. REV. 387, 391 (1991) (arguing that the job of advocates for the homeless is to respond to their clients' present housing needs, not devise long-term solutions to a broader problem).

139. *See* Leslie Kaufman, *City Is Told To Rethink Shelter At Jail*, N.Y. TIMES, Aug. 20, 2002, at B3 (discussing state court judge's ruling that city could not convert a former jail into homeless shelter to deal with the overflow at the city's family shelter).

B. Criminalization of Homelessness

If early efforts to establish an affirmative right to shelter reflect the expansive hopes of advocates, subsequent challenges to attempts to criminalize behavior associated with homeless people suggest a defensive response to an angry backlash.¹⁴⁰ Local governments have turned increasingly to law enforcement and the criminal justice system to address homelessness, rather than addressing the underlying problems, such as the lack of affordable housing or social services.¹⁴¹ This shift reflects decreased sympathy for homeless people generally and outright hostility towards more visible activities like aggressive panhandling and sleeping in public parks. The reliance on law enforcement as a substitute for social welfare and housing policy¹⁴² is more prevalent in those localities that do not provide sufficient shelter space for their homeless population,¹⁴³ though it also exists in localities where there is a right to shelter.¹⁴⁴

Attempts to regulate the movement and behavior of the poor through threat of imprisonment have a long history. The Elizabethan Poor Law of 1601, which dramatically influenced social welfare policy in America, authorized the imprisonment of able-

intake center, where children must sleep on the floor, but had to find an alternative solution).

140. See, e.g., Nancy A. Millich, *Compassion Fatigue and the First Amendment: Are the Homeless Constitutional Castaways*, 27 U.C. DAVIS L. REV. 255, 264 (1994); see also KATZ, *supra* note 136, at 192 (describing the general trend).

141. See generally NAT'L COALITION FOR THE HOMELESS & NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *ILLEGAL TO BE HOMELESS: THE CRIMINALIZATION OF HOMELESSNESS IN THE UNITED STATES* (2002) [hereinafter *ILLEGAL TO BE HOMELESS*]; Maria Foscarinis et al., *Out of Sight—Out of Mind?: The Continuing Trend Toward the Criminalization of Homelessness*, 6 GEO. J. ON POVERTY L. & POL'Y 145, 149 (1999). The trend is not entirely new: cities previously used law enforcement to address homelessness, such as in "clean-up" campaigns in skid row districts during the 1950s and 1960s. See Jason Leckerman, *City of Brotherly Love?: Using the Fourteenth Amendment to Strike Down an Anti-Homeless Ordinance in Philadelphia*, 3 U. PA. J. CONST. L. 540, 548 (2001) (noting the passage of the Philadelphia "Sidewalk Behavior Ordinance" in 1999); see also KUSMER, *supra* note 10, at 234-35.

142. Lorne Sossin, *The Criminalization and Administration of the Homeless: Notes on the Possibilities and Limits of Bureaucratic Engagement*, 22 N.Y.U. REV. L. & SOC. CHANGE 623, 638-39, 647 (1996).

143. See Foscarinis, *supra* note 43, at 25; see also Leckerman, *supra* note 141, at 545 (noting that, in twenty-nine major cities, the homeless population exceeds the number of shelter beds provided to them).

144. See *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 574-76 (2d Cir. 2002) (holding that policy sweeps of homeless people sleeping on the steps of a church violated the church's First Amendment rights).

bodied adults who refused to work.¹⁴⁵ During the late nineteenth and twentieth centuries, police in American cities relied on vagrancy and loitering statutes to help ensure that homeless people remained in skid row areas. These practices were eventually limited by Supreme Court decisions invalidating local vagrancy¹⁴⁶ and loitering¹⁴⁷ statutes. The most recent wave of anti-homeless criminal sanctions, however, seeks to return to an approach of combating the social problems of poverty through criminal sanctions and to increase the discretion given to local law enforcement officials while trying to avoid potential constitutional problems of vagueness and overbreadth.¹⁴⁸

Cities claim they are merely protecting residents against crime, controlling threats to public health and sanitation, and trying to attract business and tourism.¹⁴⁹ New York City and San Francisco—municipalities with disproportionately large homeless populations—have lately taken particularly tough stances, seeking to rid their streets of homeless people through aggressive enforcement of “quality of life” measures.¹⁵⁰ Some localities, however, have pursued more constructive alternatives that seek to facilitate the intervention of social service providers on behalf of homeless people, rather than simply sweeping them from public view.¹⁵¹

Criminal sanctions against homeless people typically restrict their right to use certain public spaces or to solicit money. Public

145. See MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* 14 (10th ed. 1996).

146. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 171 (1972) (finding that an overbroad vagrancy ordinance violates the Due Process Clause).

147. *Kolender v. Lawson*, 461 U.S. 352, 353 (1983) (holding a California law requiring people who loiter or wander the streets to provide “a credible and reliable” identification and to account for their presence when asked by a police officer void for vagueness and in violation of due process).

148. See Sossin, *supra* note 142, at 638-39, 642-43; see also Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: of Panhandlers, Skid Rows, and Public Space Zoning*, 105 YALE L.J. 1165, 1209 (1996) (criticizing Supreme Court decisions that “swept away the pre-existing legal code of the streets,” including the power of law enforcement to control the residents of skid row). But see Sossin, *supra* note 142, at 646 (“The criminalization of homelessness serves essentially cosmetic functions for municipalities.”).

149. Foscarinis, *supra* note 43, at 23-24; see Steven R. Paisner, *Compassion, Politics, and the Problems Lying on Our Sidewalks: A Legislative Approach for Cities to Address Homelessness*, 67 TEMP. L. REV. 1259, 1271-73 (1994) (summarizing the interests and concerns of a city and its inhabitants in the context of homelessness).

150. See, e.g., Evelyn Nieves, *In Famously Tolerant City, Impatience with Homeless*, N.Y. TIMES, Jan. 18, 2002, at A14 (describing the hard line approaches of New York, San Francisco, and other cities).

151. Foscarinis et al., *supra* note 141, at 17 (reviewing local legislation).

space restrictions include broad bans on sleeping in all public spaces or narrower prohibitions on sleeping in certain public areas at certain times.¹⁵² Some cities have focused on specific locations, like transportation systems.¹⁵³ In addition to passing new laws, cities have selectively enforced existing laws against loitering, littering, jaywalking, and similar offenses.¹⁵⁴

Cities have also tried to restrict the ability of homeless people to solicit funds from others in public.¹⁵⁵ Some cities have imposed broad bans on begging.¹⁵⁶ Others have adopted narrower time, place, and manner restrictions, such as prohibitions on subways, near automated teller machines, or at night.¹⁵⁷

Challenges to the law enforcement model have dominated much of homeless legal advocacy for over a decade.¹⁵⁸ Homeless people have attacked the constitutionality of these restrictions under the First Amendment,¹⁵⁹ the Fourth Amendment,¹⁶⁰ the Eighth

152. See, e.g., *Davison v. Tucson*, 924 F. Supp. 989, 991 (D. Ariz. 1996) (denying motion to enjoin a local ordinance outlawing sleeping in public); *Roulette v. City of Seattle*, 850 F. Supp. 1442, 1444 (W.D. Wash. 1994) (denying challenge to an ordinance prohibiting sitting or lying on a public sidewalk in certain parts of the city at certain times of day); *City of Pompano Beach v. Copalbo*, 455 So. 2d 468, 468-69 (Fla. Dist. Ct. App. 1984) (holding a prohibition against sleeping in automobile or other vehicle as unconstitutionally vague and overbroad); *Pollard v. State*, 687 S.W.2d 373, 373-74 (Tex. Ct. App. 1985) (holding defective a complaint based on a local prohibition against sleeping in a public space); see also Sossin, *supra* note 142, at 643.

153. See, e.g., *Streetwatch v. Nat'l R.R. Passenger Corp.*, 875 F. Supp. 1055, 1064-67 (S.D.N.Y. 1995) (granting preliminary injunction to prevent Amtrak from enforcing its policy of evicting homeless people from Penn Station without a justifiable basis); see also Ellickson, *supra* note 148, at 1198.

154. See, e.g., *Johnson v. City of Dallas*, 860 F. Supp. 344, 346 (N.D. Tex. 1994); see also Foscarinis, *supra* note 43, at 17-19 (summarizing the bans).

155. See Foscarinis, *supra* note 43, at 20-21 (summarizing the restrictions).

156. See, e.g., *Greater Cincinnati Coalition for the Homeless v. City of Cincinnati*, 56 F.3d 710, 713 (6th Cir. 1995) (challenging a local anti-begging ordinance); *Loper v. N.Y. City Transit Auth.*, 999 F.2d 699, 702-06 (2d Cir. 1993) (affirming district court's order striking down an anti-begging statute under the First Amendment); *L.A. Alliance for Survival v. City of Los Angeles*, 987 F. Supp. 819, 821 (C.D. Cal. 1997) (granting preliminary injunction preventing enforcement of local ordinance prohibiting aggressive solicitations by prohibiting solicitations in specified locations).

157. See, e.g., *Young v. N.Y. City Transit Auth.*, 903 F.2d 146, 147 (2d Cir. 1993) (challenging regulations prohibiting begging and panhandling in transit facilities); *Roulette*, 850 F. Supp. at 1442 (ordinance prohibiting aggressive begging).

158. See Foscarinis, *supra* note 118, at 339; Wright, *supra* note 40, at 182-98.

159. See, e.g., *Loper*, 999 F.2d at 704 (holding that begging on public streets is protected expression); *Young*, 903 F.2d at 146-47 (holding that begging on subways, unlike solicitation by organized charities, is not protected solicitation); *Blair v. Shanahan*, 775 F. Supp. 1315, 1317-18 (N.D. Cal. 1991) (granting declaratory judgment against anti-begging statute); see also *Fifth Avenue Presbyterian Church v. City of New York*, 293 F.3d 570, 572 (2d Cir. 2002) (upholding injunction against city's attempt to prevent homeless people from sleeping on a church's steps as violation of

Amendment,¹⁶¹ and the right to travel.¹⁶² For example, in *Pottinger v. City of Miami*,¹⁶³ the district court in the Southern District of Florida concluded that Miami's policy of arresting homeless people for engaging in essential daily activities, like eating and sleeping in public, violated the Eighth Amendment because homelessness is not a "choice," but rather is caused by a person's economic situation and/or physical or mental condition.¹⁶⁴ Other challenges, however, have proven less successful,¹⁶⁵ and the fact that the courts have uniformly rejected arguments that the homeless constitute a "suspect class" for equal protection purposes has blunted the potential strength of challenges to various measures targeting homeless people.¹⁶⁶

Critics complain that such rights-based litigation ignores a city's legitimate interest in keeping its public sidewalks spaces safe and

Free Exercise Clause); Helen Hershkoff & Adam S. Cohen, Commentary, *Begging to Differ: The First Amendment Right to Beg*, 104 HARV. L. REV. 896, 897 (1994) (arguing that begging is protected by the First Amendment).

160. See, e.g., *Love v. City of Chicago*, No. 96 C 0396, 1998 U.S. Dist. LEXIS 1386, *1-*2 (N.D. Ill. Feb. 5, 1998) (denying motion for a preliminary injunction challenging city practice of seizure and destruction of homeless people's property); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1570 (S.D. Fla. 1992) (holding that Miami's policy of seizing and destroying homeless people's property or forcing them to abandon it at arrest sites violates the Fourth Amendment); *State v. Mooney*, 588 A.2d 145, 154 (Conn. 1991) (holding that a homeless individual had a reasonable expectation of privacy in the contents of his closed containers left under a bridge underpass).

161. See, e.g., *Pottinger*, 810 F. Supp. at 1561-65 (concluding that it constituted cruel and unusual punishment to punish people for being homeless since homelessness is an involuntary status); *Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994) (holding that punishing homeless people for sleeping in public when they had nowhere else to go punished involuntary status in violation of the Eighth Amendment).

162. See, e.g., *Johnson*, 860 F. Supp. at 353-55 (ordinance allegedly deterring people from moving to Dallas did not violate the right to travel); *Tobe v. City of Santa Ana*, 892 P.2d 1145, 1164-66 (Cal. 1995) (reversing decision that anti-homeless ordinance prohibiting camping in public impermissibly restricted the right to travel).

163. *Pottinger*, 810 F. Supp. at 1551.

164. See *id.* at 1565.

165. See *Joyce v. San Francisco*, 87 F.3d 1320, 1320 (9th Cir. 1996); *Young*, 903 F.2d at 164 (upholding transit authority's rules restricting begging on subway trains against a First Amendment challenge); *Whiting v. Town of Westerly*, 942 F.2d 18, 19 (1st Cir. 1997) (upholding ordinance prohibiting sleeping outdoors in public or in a motor vehicle in public); see also Daniels, *supra* note 125, at 709-15 (discussing cases showing courts "transition from sympathy to skepticism" of such arguments). But see Blasi, *supra* note 18, at 224 (rejecting the argument that by emphasizing external causes of homelessness and portraying homeless people as victims of larger structural forces, litigators adopted a self-destructive approach).

166. See Jennifer E. Watson, Note, *When No Place Is Home: Why the Homeless Deserve Suspect Classification*, 88 IOWA L. REV. 501, 502-03, 511 (2003).

clean.¹⁶⁷ Others say it diverts attention from more substantial long-term issues like affordable housing and declining relative income levels among the poor. Fighting to allow homeless people to camp in a public park or beg on a subway, they argue, does nothing to address the root causes of homelessness, but rather establishes, at best, only negative rights that prevent the government from punishing people for certain behavior without imposing any affirmative duties.¹⁶⁸

Moreover, while high-profile cases challenging restrictions on sleeping in a city's parks or begging on its streets certainly attract attention, not all the sentiments it generates are positive. The public's frustration—or "compassion fatigue"—with homeless people occupying public spaces has also gained respectability and force among commentators who approach the issue from a land management perspective and emphasize a city's need for orderly, aesthetically pleasing public spaces.¹⁶⁹

Yet, it is unfair to blame advocates for misdirecting efforts away from long-term solutions. Indeed, leading homeless civil rights groups themselves recognize that anti-criminalization lawsuits, while invaluable, do not create affordable housing or accessible services.¹⁷⁰ Litigation is initiated in response to the real and immediate needs of homeless clients and to the government's failure to implement and sustain an effective anti-poverty policy. When a homeless person is arrested for sleeping on a park bench, her lawyer's first response is not to address the underlying causes of homelessness, but to respond to a concrete injustice. Indeed, prohibitions on begging or sleeping in the park do not threaten some abstract notion of liberty, but rather strike at the ability of men and women to survive.¹⁷¹

167. See Ellickson, *supra* note 148, at 1227; Rob Teir, *Restoring Order in Urban Public Spaces*, 2 TEX. REV. L. & POL. 255, 257 (1998) (arguing that the claims of homeless rights advocates "invite the judiciary to usurp power from city councils and communities and, if successful, withdraw the vitality of residential and commercial areas").

168. See Daniels, *supra* note 125, at 729.

169. See Ellickson, *supra* note 148, at 1222-23 (arguing for the establishment of an informal zoning system that grants police officers significant discretion to preserve order on the streets and other public areas); see also Paisner, *supra* note 149, at 1304 (noting the problems homelessness creates for all residents of a city, not merely homeless people themselves).

170. ILLEGAL TO BE HOMELESS, *supra* note 141, at 73.

171. See Jeremy Waldron, *Homeless and the Issue of Freedom*, 39 UCLA L. REV. 295, 303, 320 (1991).

In short, litigation has played an important part in challenging aggressive, anti-homeless law enforcement policies. Decisions like *Pottinger* have helped overcome—or at least mitigate the effects of—attempts to use criminal law to deny society's poorest and most vulnerable members the basic means of survival.¹⁷² Legal advocacy also has fostered effective organizing approaches, raising awareness of and sympathy for homeless people (and helping mobilize public sentiment against anti-homeless ordinances).¹⁷³ While such litigation may establish only negative rights,¹⁷⁴ it has helped lead some governments to initiate programs designed to assist homeless people.¹⁷⁵ Thus, while resisting attempts to criminalize homelessness represents an integral part of homeless legal advocacy, it must be part of a broader strategy that attempts to address homelessness' root causes. The following Part outlines some elements of this broader strategy.

III. FUTURE DIRECTION OF HOMELESS LEGAL ADVOCACY

In light of the strengths and limitations of previous homeless legal advocacy, the question arises as to what role advocates can and should play in the future. This Part will outline possible new directions for homeless legal advocacy by building on past experiences and our current understanding of homelessness. First, it will consider the implications of the new poverty law scholarship of the last two decades for the development of legal advocacy models focused on homelessness. It will then describe the importance of tying homeless advocacy to more general anti-poverty efforts. It will next discuss the need to develop advocacy in more holistic settings where lawyers can work in tandem with other professionals, such as social workers, medical doctors, mental health professionals, and substance abuse counselors, to address homeless clients' various non-legal needs. While legal advocacy alone will never solve a problem as complex and deeply rooted as homelessness, it still has an important role to play.

172. See *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1580 (S.D. Fla. 1992); see *supra* notes 163-166 and accompanying text.

173. ILLEGAL TO BE HOMELESS, *supra* note 141, at 75, 83.

174. See *supra* note 168 and accompanying text.

175. See *Daniels*, *supra* note 125, at 729-31.

A. The New Poverty Law Scholarship and the Value of Homeless Legal Advocacy

The new poverty law scholarship that emerged in the wake of the Critical Legal Studies movement prompted a reexamination of the role lawyers play in addressing problems like homelessness.¹⁷⁶ This Section explores the central ideas of this movement and its relevance to homeless legal advocacy today. It then explains the continuing value of legal services to deliver tangible benefits that help people to escape homelessness and build public support for critical issues like affordable housing.

1. Critical Legal Studies and the New Poverty Law Scholarship

Traditional models of poverty lawyering have been challenged in the past two decades by the growth of the Critical Legal Studies ("CLS") movement,¹⁷⁷ and the new poverty law scholarship it helped engender.¹⁷⁸ CLS focused attention on the way in which law both reflects the interests of society's most powerful members and legitimates the subordination of less powerful groups. CLS attempted to expose the inherent indeterminacy of standards and values underpinning legal thought.¹⁷⁹ This delegitimization of traditional values and structures, characteristic of much postmodern thought,¹⁸⁰ carried significant implications for poverty lawyers, who were no longer seen as fighting a worthy battle to reform a redeemable system, but as somehow perpetuating inherent forms of domination and inequality. Some commentators contended that in establishing "rights" for their clients, public interest lawyers were winning only pyrrhic victories because the system it-

176. See *infra* notes 177-181 and accompanying text.

177. See generally Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561 (1983); see also Ruth Margaret Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIAMI L. REV. 999, 1024-25 (1994) (noting the presence of critical perspectives in the "old" poverty lawyering of the 1960s, including an emphasis on client empowerment, a critique of lawyer-driven advocacy, and an emphasis on developing a community base).

178. For a description of the origins and development of the new poverty law scholarship, see Louise G. Trubek, *Lawyering for Poor People: Revisionist Scholarship and Practice*, 48 U. MIAMI L. REV. 983, 984-86 (1994) (describing, *inter alia*, the foundation of the Interuniversity Consortium on Poverty Law).

179. See Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 722 (1992).

180. See generally Joel F. Handler, *Postmodernism, Protest, and the New Social Movements*, 26 LAW & SOC'Y REV. 697 (1992).

self ultimately reinforced alienation and powerlessness among the poor.¹⁸¹

CLS's basic principles have spawned several smaller, more-focused critical studies movements.¹⁸² Critical race theorists emphasize the way in which formal legal structures and norms perpetuate racial oppression and inequality.¹⁸³ Feminist legal theorists describe how law embodies a male perspective that suppresses the concerns of women, and advance a women's perspective on legal issues that is distinct from men's.¹⁸⁴ The new poverty law scholarship, or "critical lawyering" as it is sometimes known,¹⁸⁵ applies the principles of CLS to the practice of public interest law. The growing body of new poverty law scholarship contains significant challenges to and lessons for the future direction of homeless legal advocacy.

Proponents of critical lawyering challenge the traditional view of the attorney-client relationship. In the traditional conception of the relationship, the client's identity consists of a bundle of interests, and it is the lawyer's duty to manipulate the outside world to serve those interests, without ever substituting her own judgment as to what those interests are or should be.¹⁸⁶ Critical legal scholars argue instead that a client's interests are indeterminate and that the process of representation itself affects a client's understanding of those interests.¹⁸⁷ The lawyer, not unlike the scientist in quantum physics, does not remain a neutral, detached observer; just as the scientist alters the object of the experiment by observation, a lawyer alters a client's conception of her interests through the representation process.

181. Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369, 375 (1982-83).

182. See Gary Minda, *The Jurisprudential Movements of the 1980s*, 50 OHIO ST. L.J. 599, 617 (1989).

183. See, e.g., Greta McMorris, *Critical Race Theory, Cognitive Psychology, and the Social Meaning of Race: Why Individualism Will Not Solve Racism*, 67 UMKC L. REV. 695, 696-97 (1999).

184. See, e.g., Nancy Isenberg, *Laissez-Unfaire: Gender and the Political Manipulation of the Common Law in Antebellum America*, 37 TULSA L. REV. 929, 929-30 (2002).

185. See Ruth Buchanan & Louise G. Trubek, *Resistance and Possibilities: A Critical and Practical Look at Public Interest Lawyering*, 19 N.Y.U. REV. L. & SOC. CHANGE 687, 687 n.1 (1992) (describing the origins of the term "critical lawyering").

186. See William H. Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469, 470 (1984).

187. *Id.* at 470-71.

More radical critiques of conventional lawyering call for an entire restructuring of the attorney-client relationship.¹⁸⁸ Anthony V. Alfieri describes the attorney-client model of representation as a form of domination that inhibits the growth of genuine class-consciousness among poor people and blunts fertile possibilities for social change.¹⁸⁹ Others adopt a more moderate approach that seeks to incorporate progressive reforms into existing models of representation, emphasizing the need for greater dialogue between attorneys and their clients and for the establishment of a collaborative environment that empowers the client.¹⁹⁰

A focus on the primacy of a client's voice, rather than on the formal legal process, is central to much revisionist poverty law scholarship.¹⁹¹ In an influential article, Lucie E. White describes her relationship with her client, Mrs. G., who was challenging an alleged overpayment from welfare. Instead of following the attorney's advice to beg for mercy and say she spent the money on "necessities," thus excusing her for liability for the overpayment, Mrs. G. defiantly told the hearing officer that she had spent the money on Sunday shoes so her children could attend church.¹⁹²

White and others believe that formal legal rules, instead of empowering poor people, may help keep them silent.¹⁹³ Barbara Bedzek explains how poor, predominantly African-American defendants in Baltimore's housing court have been effectively silenced and excluded from meaningful participation in the process,

188. See, e.g., Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 701 (1987-88).

189. See *id.* at 697-700.

190. See Buchanan & Trubek, *supra* note 185, at 703-04; Lucie E. White, *Collaborative Lawyering in the Field?: On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 158 (1994).

191. See, e.g., GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 48-51 (1992); Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 600 (1992) (stating "rights are not rights where they cannot be spoken or heard"); William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Regan Era*, 48 U. MIAMI L. REV. 1099, 1101 (1994) ("The new scholarship insists that overcoming the cultural distance that obscures the political sophistication and coping skills of poor clients is the first duty of the poverty lawyer."); Trubek, *supra* note 178, at 987; see generally Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

192. See White, *supra* note 191, at 21-32 (describing the story of Mrs. G.). Although Mrs. G. lost the hearing, the county withdrew its overpayment claim shortly after Mrs. G. had filed her appeal. *Id.* at 32.

193. See, e.g., *id.* at 35-37.

despite the existence of formal legal rights.¹⁹⁴ Bezdek describes the existence of two worlds in a single courtroom where poor, less well-educated tenants try to express themselves in the language of human decency—assuming they speak at all—while the court and landlords' agents communicate, with great effect, in the formal language of the law.¹⁹⁵

Traditional lawyering methods, these commentators argue, must be revised to take account of the client's voice in the course of representation; similarly, the attorney-client relationship must be infused with a spirit of mutual understanding and collaboration.¹⁹⁶ For example, welfare "fair hearings," which are generally provided by state statute and guaranteed by the federal Constitution,¹⁹⁷ can be viewed less as a forum for zealous advocacy than an opportunity for a client to tell her story¹⁹⁸—a privilege historically denied or limited for women and people of color.¹⁹⁹

Critical lawyering, however, is not without its detractors.²⁰⁰ Perhaps the most serious charge is that the movement provides little, if any, practical guidance to attorneys,²⁰¹ a similar criticism of CLS generally.²⁰² The vision of transforming and empowering poor people by altering the traditional dynamic of the attorney-client relationship may seem persuasive in an academic context, but, as critics point out, it ultimately has little relevance for the demands and realities of poverty law practice.²⁰³ Poverty lawyers not only have

194. See Bezdek, *supra* note 191, at 583-90.

195. See *id.* at 586-90. This difference can also be described as a clash between rule-oriented and relation-oriented accounts. See *id.* at 586-87.

196. See Buchanan & Trubek, *supra* note 185, at 703.

197. See, e.g., *Goldberg v. Kelley*, 397 U.S. 254, 262-63 (1970).

198. Cf. Lucie E. White, *Goldberg v. Kelley: On The Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 862-63 (1990) (arguing that the spirit of landmark welfare rights decisions like *Goldberg v. Kelley* is for the fair hearing to be a genuinely participatory legal institution). Some commentators question whether fair hearings have led to more accurate decisions or increased the power of the poor, as *Goldberg* had intended. See, e.g., White, *supra* note 190, at 3 n.6.

199. See White, *supra* note 190, at 9-13.

200. See, e.g., Gary L. Blasi, *What's a Theory For?: Notes on Reconstructing Poverty Law Scholarship*, 48 U. MIAMI L. REV. 1063, 1087-89 (1994); Simon, *supra* note 191, at 1101 (criticizing "the preoccupation of the new poverty law scholars with professional domination and their premises about the nature of domination").

201. See White, *supra* note 190, at 159 (recognizing that advocates of collaborative lawyering "have offered little guidance about the day-to-day practices that their vision implies.").

202. See, e.g., Ed Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509, 554-55 (1984).

203. See Blasi, *supra* note 200, at 1087 ("Never has so much theory rested on so little practice.").

limited time and resources, but also are obliged—by professional ethics, if not, moral imperatives—to assist clients who, understandably, demand concrete results, such as immediate help maintaining public assistance benefits or avoiding eviction. If nothing else, the new poverty law scholarship has widened the gulf between theoreticians in academia and practitioners in legal services offices. While critical theorists rightly call attention to the danger of lawyers' excessive influence over poor clients, the idea that a lawyer would exercise no such influence and yet fulfill even the barest notions of professional competency, let alone true service to the client, is unrealistic.²⁰⁴

2. *Continuing Value of Homeless Legal Advocacy*

The needs of homeless individuals reveal the limitations of the new poverty law scholarship. Most people do not become homeless without at least some interaction with legal-bureaucratic institutions, and generally do not escape homelessness without successfully navigating those institutions, whether it be by obtaining housing assistance, public benefits, medical treatment, or counseling. The idea of some critical theorists, that lawyers exercise hegemony through the process of "asking"²⁰⁵ the client about her problem, does not accurately reflect the experience of providing legal representation to homeless individuals.

Homeless men and women generally do not walk into legal services offices and present a single, concrete issue around which to frame the first conversation. In fact, many homeless people are initially reached through outreach programs or walk-in clinics at places such as soup kitchens and food banks.²⁰⁶ A homeless client may present a range of legal issues (some of which may not be remediable), and a lawyer must engage in a process of "asking" to find out precisely what those issues are. Moreover, the idea of

204. See Simon, *supra* note 191, at 1102-03; cf. White, *supra* note 198, at 861-62 (describing, in the welfare fair hearing context, the tension advocates face between their duty of speaking for client and the value of their client being heard).

205. Cf. Simon, *supra* note 186, at 486-87.

206. See Susan M. Barrow et al., *Evaluating Outreach Services: Lessons from a Study of Five Programs*, NEW DIRECTIONS FOR MENTAL HEALTH SERVICES, Winter 1999, at 29 ("In a short time, outreach has moved from the periphery of the mental health services system to a prominent position as one of the essential elements of adequate community-based care."); Sally Erickson & Jamie Page, *To Dance with Grace: Outreach and Engagement to Persons on the Street*, in PRACTICAL LESSONS, *supra* note 38, at 6-7 to 6-8.

lawyering to raise political consciousness²⁰⁷ is problematic given the pressing material needs of homeless people. Community-based advocacy models²⁰⁸ may likewise prove more difficult to implement given homeless people's geographic dispersal and diversity.²⁰⁹ To the extent such advocacy proves feasible, the assertion of legal rights can interact with and complement attempts to develop a broader social movement.²¹⁰

Some principles of critical lawyering nevertheless provide fruitful avenues for future homeless advocacy. While the idea of re-orienting attorney-client relations along an axis of client empowerment presents certain challenges,²¹¹ it is important that attorneys pay close attention to what their homeless clients are saying and not simply assume what their interests are—an easy mistake to make when working with individuals as disempowered and socially stigmatized as homeless people. At an institutional level, lawyer-dominated agendas can be avoided by taking account of what studies show homeless people have defined as their more pressing needs in developing pragmatic priorities and approaches.²¹²

Ultimately, however, a lawyer must transform the narrative of a case into something the legal system can process, while making the system understandable to the client.²¹³ The challenge is to remain

207. See, e.g., Stephen Wexler, *Practicing Law For Poor People*, 79 YALE L.J. 1049, 1053 (1970) ("Poverty will not be stopped by people who are not poor. . . . The lawyer who wants to serve poor people must put his skills to the task of helping poor people organize themselves."); cf. Martha Minow, *Political Lawyering: An Introduction*, 31 HARV. C.R.-C.L. L. REV. 287, 289 (1996) (describing the broad mobilization in the labor and civil rights movements).

208. Raymond H. Brescia et al., *Who's in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831, 846-48 (1998); Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069, 1133 (1970).

209. See Robert A. Solomon, *Representing the Poor and Homeless: A Community-Based Approach*, 19 ST. LOUIS U. PUB. L. REV. 475, 480 (2000). Community-based efforts may, however, play an important role in addressing housing and other issues that prevent homelessness, even though conflicts may arise between individual advocacy and the interests of the community. See *id.* at 481.

210. See Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589, 610-12 (1986).

211. See *supra* notes 206-207 and accompanying text.

212. Cf. Dennis P. Culhane et al., *Making Homelessness Programs Accountable to Consumers, Funders, and the Public*, in PRACTICAL LESSONS, *supra* note 38, at 4-4.

213. See LOPEZ, *supra* note 191, at 43 (suggesting that lawyers must be bicultural, "creating both a meaning for the legal culture out of the situation people are living, and a meaning for people's practices out of the legal culture"); cf. Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 73 (1988) (suggesting that deciding how and to what extent she should conform to the will of the client to fit the relevant legal processes).

true to the client's narrative while providing a high caliber of legal services. If a client wants to stand up at a hearing to tell her story and will feel more empowered as a result,²¹⁴ the lawyer must recognize and honor that wish. On the other hand, the lawyer must counsel the client about the possible consequences and be careful not to foist her own theories about empowerment upon a client who may ultimately be less interested in telling her story than in gaining a tangible benefit. At the same time, even in ordinary cases, a client's story has an inherent political message—for example, the state's failure to provide sufficient child care assistance while imposing strict work requirements on single mothers receiving welfare benefits—that can be drawn out and amplified through the process of individual representation.²¹⁵

B. Strengthening Links between Homelessness and Poverty Law Advocacy

A frequent tactic of homeless rights lawyers has been to define homeless people as a separate, unique class that deserves society's utmost sympathy and support. While millions of other Americans may be poor, the argument goes, only homeless people are so destitute they must live on the streets. This approach helped bring important benefits, such as the creation of a vast network of shelter systems, the establishment of homeless assistance programs in welfare bureaucracies that provide emergency housing grants, and increased public recognition of the overall problem. It has, however, also contributed to a degree of separation between homeless rights advocacy and poverty law practice. While the two are closely related—many public benefits or housing court cases are potentially homeless prevention cases—there tends to be a conceptual split between the poor or working poor and the homeless. In fact, many legal issues confronting homeless people overlap with those confronting other poor people. It is important that, where appropriate, homeless rights advocates strengthen these connections because it will help homeless clients and, more broadly, because it will reinforce that homelessness is—ultimately—a problem of ex-

214. See *supra* notes 204-205 and accompanying text.

215. Cf. Gabel & Harris, *supra* note 181, at 396 (suggesting ways for lawyers to politicize typically non-political cases). For an extreme expression of this view, see, for example, Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2429 (1989), describing the power of stories as superior to that of litigation in producing social change. For a much more limited view of the power of stories, see Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 826 (1993).

treme poverty. Strengthening this connection is particularly important in the wake of welfare reform and other changes adversely affecting poor people's legal rights and the social safety net in general.

This Section explores the possibility of linking homelessness to more general anti-poverty advocacy. The discussion below is not intended to be exhaustive, but rather represents some important themes around which advocates can organize and direct future efforts.

1. *Public Benefits Advocacy*

Studies have documented the connection between increases in homelessness and the decline in the availability and relative amount of public assistance.²¹⁶ Lawyers have previously targeted systemic problems of welfare administration in cities with large homeless populations such as New York and Los Angeles. They have also helped win greater shelter or housing supplements to welfare grants.²¹⁷

Yet, there remain significant obstacles for homeless people in gaining access to benefit programs such as welfare, SSI, and food stamps. Welfare reform created strict work requirements and caseload reduction incentives that make it more difficult for homeless people to obtain benefits. Despite the fact that many homeless people remain eligible for SSI and food stamps, participation rates in these programs remain relatively low.²¹⁸ In addition to issues of substantive eligibility, homeless people confront residency, address, and documentation requirements that may preclude them from obtaining benefits.²¹⁹

a. *Welfare*

The 1996 welfare reform act has adversely impacted homeless people and increased the need for legal advocacy. In general, the act has limited eligibility, imposed strict work requirements, and

216. See *supra* notes 87-93 and accompanying text; see also BURT ET AL., *supra* note 3, at 232.

217. See Gary L. Blasi, *Litigation Strategies for Addressing Bureaucratic Disentitlement*, 16 N.Y.U. REV. L. & SOC. CHANGE 591, 598-99 (1987-88).

218. See Jeremy Rosen et al., *Food Stamp and SSI Benefits: Removing Access Barriers for Homeless People*, 34 CLEARINGHOUSE REV. 679, 679 (2001) (citing survey that only eleven percent of homeless persons received SSI benefits and only thirty-seven percent received food stamps).

219. See *id.*

placed a mandatory five-year lifetime cap on receipt of benefits.²²⁰ It has also increased the danger of “bureaucratic disentanglement”²²¹—the various extralegal administrative hurdles that discourage people from applying for or that delay receipt of benefits²²²—by allowing states and localities (and thus front-line caseworkers) greater discretion to promote employment over financial assistance or to discourage people from even applying for benefits.²²³ Stricter work requirements,²²⁴ time limits on receipt of benefits,²²⁵ and the ability to sanction recipients²²⁶ have dramatically expanded the power of caseworkers and decreased the power of recipients in dealing with welfare bureaucracies.²²⁷

Homeless people have traditionally been underrepresented among the pool of welfare recipients despite their unquestioned financial eligibility,²²⁸ and are particularly vulnerable to bureaucratic disentanglement and “churning,” the practice of rapid administrative closure of welfare cases for reasons such as the recipient’s failure to comply with a request for verification of eligibility or to

220. 42 U.S.C. §§ 607-608 (2001).

221. See Michael Lipsky, *Bureaucratic Disentanglement in Social Welfare Programs*, 58 SOC. SERV. REV. 3, 3 (1984) (“In bureaucratic disentanglement, obligations to social welfare beneficiaries are reduced and circumscribed through largely obscure ‘bureaucratic’ actions and inactions of public authorities . . .”).

222. See Blasi, *supra* note 217, at 594-95 (describing the devastating impact of bureaucratic disentanglement on homeless applicants in Los Angeles County); see also *Reynolds v. Giuliani*, 35 F. Supp. 2d 331, 346-47 (S.D.N.Y. 1999).

223. See Alice Bers, Recent Development, *Reforming Welfare After Welfare Reform*: *Reynolds v. Giuliani*, 36 HARV. C.R.-C.L. L. REV. 571, 599 (2001) (“With PRWORA’s encouragement of discretionary welfare administration, the potential for abuse of that discretion is concomitantly higher; this warrants courts scrutinizing the actions of local government institutions more closely to ensure that poor people’s rights are not violated.”); Diller, *supra* note 98, at 1150-52.

224. See Diller, *supra* note 98, at 1148-49 (“Work requirements call for judgments about whether the client can work, what activities should be required, whether the client has access to suitable child care, whether a recipient was justified in quitting a job, and whether the client has good excuses for missing appointments or assignments.”).

225. See *id.* at 1150-51 (noting that while time limits themselves may be fixed, caseworkers exercise discretion in manipulating information about time limits and in deciding which recipients may qualify for the limited exceptions from those limits).

226. See *id.* at 1157-60 (discussing the power of states to administer a growing array of sanctions, including those for violations of work requirements).

227. See *id.* at 1152-56 (citing, for example, the role of caseworkers in carrying out “diversion” policies that attempt to dissuade potentially eligible individuals from applying for benefits, such as requirements that applicants engage in job search programs before receiving benefits).

228. See Susan D. Bennett, “No Relief But Upon the Terms of Coming into the House,”—*Controlled Spaces, Invisible Disentitlements, and Homelessness in an Urban Shelter System*, 104 YALE L.J. 2157, 2180-82 (1995).

make a scheduled appointment with her caseworker.²²⁹ The fact that many homeless people suffer from disabilities often creates further obstacles to obtaining and maintaining welfare benefits.²³⁰ The restrictions imposed by the 1996 act have increased the need for advocates to challenge abuses,²³¹ as many have already done.²³²

b. SSI

Because federal welfare programs have traditionally been limited to families with children, single adults have been forced to rely on state general assistance programs that provide significantly lower benefit rates, if they exist at all. Single adults still make up a majority of the homeless population, though the proportion of families with children has been rising steadily.²³³ Many homeless single adults suffer from mental illness. For this population, it is important, where possible, to obtain benefits under the SSI program,²³⁴ the federal means-tested program for low-income persons who are elderly (sixty-five and older), blind, or disabled.²³⁵ Indeed,

229. *See id.* at 2181 (describing a study in New York City finding that seventy-five percent of the clients studied had benefits terminated within the first six months they had received them).

230. New York City's failure to provide reasonable mental accommodations to its welfare program for people with disabilities is now the subject of a pending complaint filed by several legal service organizations with the United States Department of Health and Human Services, Office of Civil Rights. *See* Nina Bernstein, *Complaint Accuses New York City of Bias Against Mentally Ill*, N.Y. TIMES, Apr. 3, 2002, at B2.

231. *See, e.g.*, Peter Edelman, *Responding to the Wake-Up Call: A New Agenda for Poverty Lawyers*, 24 N.Y.U. REV. L. & SOC. CHANGE 547, 551-54 (1998) (discussing the "cornucopia of advocacy challenges and opportunities" including the availability of child care, health coverage, and transportation).

232. *See, e.g.*, *Saenz v. Roe*, 526 U.S. 489, 507-08 (1999) (holding that the PRWORA's authorization of a durational residency requirement for the receipt of welfare benefits did not resuscitate the constitutionality of a state statute allowing for such a requirement); *Reynolds v. Giuliani*, 35 F. Supp. 2d 331, 347 (S.D.N.Y. 1999) (enjoining New York City from deterring plaintiffs from applying for emergency food stamps, Medicaid, and cash assistance at job centers); *Sojourner A. v. N.J. Dep't of Human Servs.*, 794 A.2d 822, 824 (N.J. Super. Ct. App. Div.), *certification granted by*, 803 A.2d 1165 (N.J. 2002) (challenging the constitutionality of a state statute capping welfare benefits for women who have additional children); *Davila v. Turner*, No. 96-407163 (N.Y. Sup. Ct. Apr. 15, 1999), *reprinted in* N.Y. L.J., Apr. 16, 1999, at 26 (holding that the city violated the law by assigning virtually all welfare recipients to workfare without consideration of other qualifying activities such as education and training); *see also* Bers, *supra* note 223, at 606 (noting that litigation can still achieve important institutional changes even in the current discretionary welfare regime). For a more complete description of the *Reynolds* litigation, *see id.*

233. *See supra* text accompanying notes 41-42.

234. Social Security Amendments of 1972, Pub. L. No. 92-603, 86 Stat. 1329 (1972) (codified as amended in scattered sections of 42 U.S.C.).

235. 42 U.S.C. § 1382c(a)(1)(A) (2002).

for non-elderly, mentally ill single adults—who are ineligible for TANF funds and unable to work—accessing SSI represents perhaps the best chance to gain the financial means to escape homelessness. Many homeless people meet the Social Security disability standard²³⁶ because they have chronic health problems, which being homeless often exacerbates.²³⁷ Yet, many eligible homeless people are not receiving SSI benefits,²³⁸ as the Social Security Administration (“SSA”) itself has recognized.²³⁹ The problem may partly be explained by the lack of information about SSI, the lack of assistance in filing for benefits, and the length and complexity of the application process itself.²⁴⁰ The SSA, however, has made some attempt to increase outreach efforts aimed at homeless people.²⁴¹

Given the often inappropriate denial of disability claims by homeless people,²⁴² and the high rates of reversal at the administrative hearing level where such denials are challenged,²⁴³ legal advocacy can make a significant difference.²⁴⁴ This is particularly true for individuals who suffer from alcohol or substance abuse in light of a 1997 change to eligibility criteria that prevents receipt of SSI benefits if drug or alcohol “is a contributing factor material to

236. An adult is disabled for purposes of SSI if she cannot “engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” *Id.* § 1382c(a)(3)(A).

237. See, e.g., Leonard Adler, Student Research, *SOS for SSI: The Unfulfilled Promise to Homeless Americans*, 1 GEO. J. ON FIGHTING POVERTY 304, 308-09 (1994). Homeless individuals with a sufficient and recent enough history of employment may be eligible for Social Security disability benefits (“SSD”), a non-means tested employment insurance program that can pay significantly higher benefit rates than SSI, depending on the individual’s employment history. See 42 U.S.C. §§ 401(b), 423.

238. See *id.* at 307 (“Homeless people are more likely than average Americans to have characteristics that allow them to qualify for SSI, yet they are vastly underrepresented in the program.”); Michael Diehl, *Screening Out Worthy Social Security Disability Claimants and its Effect on Homelessness*, 45 U. MIAMI L. REV. 617, 617-18 (1990-91).

239. See Social Security Administration Supplemental Security Income Modernization Project, 57 Fed. Reg. 40,732, 40,779 (Sept. 4, 1992), cited in Adler, *supra* note 237, at 309.

240. See Adler, *supra* note 237, at 311-13.

241. See *id.* at 312.

242. See *id.* at 313.

243. See *id.* (citing a sixty percent reversal rate by administrative law judges).

244. See, e.g., Richard Cullison, *SSI Applicants Shouldn’t Have to Seek Lawyers’ Help*, LEXINGTON-HERALD LEADER, Sept. 23, 2002, at A8 (stressing the importance of advocacy because the Social Security Administration frequently wrongfully denies benefits).

the determination of disability,”²⁴⁵ and thus face greater difficulty establishing disability.

Further advocacy is also needed around regulations that directly impact homeless people, such as those governing residence in public institutions such as homeless shelters, jails, and hospitals.²⁴⁶ Regulations preclude receipt of SSI benefits by individuals who remain in public homeless shelters for six months within a nine-month period.²⁴⁷ Even though the regulations require that an individual remain in the shelter for the entire month for that month to count in terms of the restriction,²⁴⁸ SSA often incorrectly counts months against recipients in which they were absent for part of that month. Also, SSI benefits are suspended when an individual enters other public institutions, such as jails. Under the pre-release program, individuals in such public institutions may either file new SSI applications or seek to reactivate previously open cases prior to their release so that, if approved, they will receive benefits upon release.²⁴⁹ Many public institutions, however, have not complied with the pre-release program.²⁵⁰

While SSI benefit rates may, in many cases, still be insufficient for homeless people to obtain permanent housing at market rates,²⁵¹ they provide a critical source of income, particularly for single adults²⁵² who must otherwise rely solely on meager state general assistance funds to survive. Indeed, obtaining SSI benefits may open the door to new housing opportunities, including subsidized housing programs run by not-for-profit organizations in the community.

c. Food Stamps

Hunger and malnutrition are important problems confronting homeless people, particularly those who do not eat at shelters or soup kitchens.²⁵³ Participation rates for the homeless population in

245. Supplemental Security Income for the Aged, Blind, and Disabled, 20 C.F.R. § 416.214 (2000); Rosen et al., *supra* note 218, at 680 (noting views of advocates that this change has decreased the number of homeless SSI recipients); Watson, *supra* note 113, at 375.

246. *See generally* 20 C.F.R. § 416.211.

247. *Id.* §§ 416.201, 416.211.

248. *Id.* § 416.211(a)(2).

249. *Id.* § 416.211(a).

250. *See* Rosen et al., *supra* note 218, at 687.

251. *See* Adler, *supra* note 237, at 311.

252. *See* BURT ET AL., *supra* note 3, at 119.

253. *See id.* at 80 (noting that homeless people are more likely to experience hunger and food insecurity than any other group); Monica A. Fennell, *Hunger and*

the federal food stamp program is even lower than that for low-income people generally, even though almost all homeless people are eligible.²⁵⁴ The barriers to homeless people's participation in the food stamp program include the lack of information about the program and its procedures and the lack of enforcement of favorable statutory and regulatory measures.²⁵⁵ Homeless people often do not have the documents necessary to verify eligibility for food stamps and have difficulty obtaining or replacing documents.²⁵⁶ Meanwhile, agencies frequently fail to adhere to requirements that they assist individuals in obtaining the necessary documents rather than simply denying their claim.²⁵⁷

While the entitlement to food stamps survived the 1996 welfare reform act,²⁵⁸ eligibility issues have grown more thorny in places where food stamps are administered through local welfare centers because the act has increased the discretion of caseworkers and the use of diversionary practices.²⁵⁹ One local practice, for example, has allegedly misinformed people that they are no longer entitled to food stamps once they receive SSI benefits.²⁶⁰ In addition, able-bodied food stamps recipients between the ages of eighteen and sixty, and without dependent children, must comply with strict work requirements to receive benefits.²⁶¹ Furthermore, the 1996 welfare reform act eliminated automatic eligibility for expedited

Homelessness: Why the Homeless Need Food Stamp Advocacy and How to Pay for It, 21 FORDHAM URB. L.J. 127, 131-32 (1993).

254. Fennell, *supra* note 253, at 132-33; see Florence Wagman Roisman, *The Lawyer as Abolitionist: Ending Homelessness and Poverty in Our Time*, 19 ST. LOUIS U. PUB. L. REV. 237, 248 n.53 (2000) (citing a recent study reporting that only thirty-seven percent of the people who use homeless assistance programs receive food stamps); Tusan, *supra* note 67, at 1196 (noting that a majority of eligible homeless families did not receive food stamps or supplemental benefits offered to parents with infants).

255. See Fennell, *supra* note 253, at 139; see also Bennett, *supra* note 228, at 2176 (describing the obstacles homeless families faced in applying for food stamps and other benefits in Washington, D.C.).

256. See Rosen et al., *supra* note 218, at 689.

257. See 7 C.F.R. § 273.2(c)(5) (2003).

258. See 7 U.S.C. § 2011 *et seq.* (2003) (setting forth the aims, provisions, and eligibility requirements of the federal food stamp program).

259. See *Roberson v. Giuliani*, 99 Civ. 10900, 2000 WL 760300, at *1 (S.D.N.Y. June 12, 2000) (addressing the issue of whether joint applicants for food stamps and public assistance may be denied food stamps for failure to comply with heightened public assistance verification rules requiring multiple interviews and a mandatory home visit in most cases). See generally *supra* notes 220-227 and accompanying text.

260. See Nina Bernstein, *Suit to Seek Food Stamps for Thousands Wrongly Denied Them*, N.Y. TIMES, Mar. 31, 2002, at A29 (describing class action suit against New York City to challenge this practice).

261. See 7 U.S.C. § 2015(d)(1)(A).

food stamps—an important provision to assist individuals waiting for their applications to be processed.²⁶²

Lawyers, therefore, can play a critical role in assisting homeless people enforce their rights under the food stamp program and navigate additional barriers imposed by the 1996 welfare reform act. They can, for example, help homeless clients prevent unlawful denials of food stamp applications for failure to provide verifying documentation,²⁶³ assist them on budgeting issues to maximize their food stamp award,²⁶⁴ and help them demonstrate eligibility for the exemptions from the work requirements for single able-bodied adults.²⁶⁵

2. Eviction Defense

Another critical part of combating homelessness is eviction prevention advocacy in specialized housing (or landlord-tenant) courts in cities across the country. These specialized housing courts handle a high volume of cases.²⁶⁶ The role of eviction prevention programs has become even more important given the shortage of affordable housing, which reduces the possibility that a tenant evicted from her home can find another place to live other than a shelter or the street.²⁶⁷ While almost all landlords have legal representation in housing court, the vast majority of tenants do not.²⁶⁸ Absent representation, the various procedural protections in urban housing codes often hinder tenants, trapping them in a web of complex rules, rather than safeguarding their rights.²⁶⁹ Represented tenants are much less likely to be evicted than those without counsel.²⁷⁰ Projects to increase access to legal representation have

262. See 7 C.F.R. § 273.2(a) (setting forth criteria households must meet to be entitled to expedited food stamps, which require the agency to process the application “promptly” and provide expedited food stamps “to households in immediate need”).

263. See *supra* notes 256-257 and accompanying text.

264. See Rosen et al., *supra* note 218, at 690-91 (summarizing regulations regarding shelter allowances).

265. *Id.* at 693-94 (discussing various exemptions).

266. See, e.g., Paula Galowitz, *The Housing Court's Role in Maintaining Affordable Housing*, in HOUSING AND COMMUNITY DEVELOPMENT, *supra* note 72, at 180 (describing the New York City Housing Court).

267. Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 HARV. C.R.-C.L. L. REV. 557, 562 (1988); see Tusan, *supra* note 67, at 1214 (noting that evictions represent the central immediate cause of homelessness).

268. See Galowitz, *supra* note 266, at 184.

269. See Scherer, *supra* note 267, at 558-59.

270. See Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35

proven extremely effective in reducing eviction rates and underscore the importance of a level playing field in housing court.²⁷¹ Unfortunately, funding to legal services organizations for eviction prevention continues to decline.²⁷² While legal advocacy cannot remedy the declining income levels and rising housing costs that underlie many evictions, it can still help prevent many low-income people from becoming homeless.²⁷³

3. *Minimizing the Negative Effects of Incarceration*

It is also important for lawyers to focus advocacy efforts on developing trends such as the link between homelessness and incarceration. A recent federal study determined that over ten percent of inmates in state prisons in the country (almost 200,000 people) had been homeless in the year before their arrest.²⁷⁴ Homeless service providers generally agree that the number of homeless single adults who were previously incarcerated rose significantly during the 1990s.²⁷⁵ Individuals with criminal records confront additional obstacles in obtaining housing, employment, and public benefits. The criminal justice system thus pushes homeless people further outside mainstream society, often for low-level drug crimes or quality-of-life offenses.²⁷⁶

Some innovative programs seek to address this problem by facilitating connections between external community providers and the

LAW & SOC'Y REV. 419, 419 (2001) (noting that a study of the New York City Housing Court revealed that "only twenty-two percent of represented tenants had final judgments against them, compared with fifty-one percent of tenants without legal representation"). New York City's Housing Court handles approximately 300,000 cases per year and issues almost 100,000 warrants of eviction. *Id.*

271. See, e.g., Galowitz, *supra* note 266, at 189.

272. See Scherer, *supra* note 267, at 560.

273. In addition to eviction prevention, advocates should continue to attempt to work on larger efforts to preserve affordable housing. See, e.g., Ammann, *supra* note 71, at 314-15 (describing efforts of advocates on a range of efforts to preserve affordable housing).

274. COALITION FOR THE HOMELESS: HOUSING A GROWING CITY: NEW YORK'S BUST IN BOOM TIMES 90 [hereinafter HOUSING A GROWING CITY] (citing a 1998 U.S. Department of Justice report); see also BURT ET AL., *supra* note 3, at 220, 231.

275. See HOUSING A GROWING CITY, *supra* note 274, at 91.

276. See Stephen R. Binder, *The Homeless Court Program: Taking the Court to the Streets*, 65 FED. PROBATION, June 2001, at 15; see also KUSMER, *supra* note 10, at 246 (noting that, during the 1990s, cities began passing "quality of life" ordinances that permitted police to arrest homeless people for minor misdemeanors such as sleeping or sitting on a sidewalk).

criminal justice system.²⁷⁷ These programs are an important step given the relatively high percentage of substance abuse and mental illness among this segment of the homeless population.²⁷⁸ Also, litigation has challenged the adequacy of discharge planning for mentally ill inmates released from hospitals²⁷⁹ and prisons.²⁸⁰ Evidence suggests that linking these inmates with social services and housing assistance upon release is cost-effective.²⁸¹ Other possible targets for legal advocacy are the lengthy disqualifications for federal housing programs²⁸² that ensnare not only those convicted of serious crimes, but also those convicted of minor offenses.²⁸³ In addition, advocates should focus more on increasing soon-to-be released inmates' access to public benefit programs.²⁸⁴ Finally, there should be an expansion of programs that seek to help homeless people resolve outstanding criminal court cases for less serious of-

277. Alissa Riker & Ursula Castellano, *The Homeless Pretrial Release Project: An Innovative Pretrial Release Option*, FED. PROB., June 2001, at 12 (describing the Homeless Release Project in San Francisco).

278. *See id.* at 10 (noting that approximately eighty-five percent of the homeless release project's clients have substance abuse issues and that about fifty percent have been diagnosed with a co-occurring mental illness).

279. *See, e.g.*, Watson, *supra* note 113, at 377-82 (discussing litigation to enforce adequate discharge planning from hospitals and psychiatric institutions).

280. *See* Brad H. v. City of New York, 712 N.Y.S.2d 336, 336, 341 (Sup. Ct. 2000) (granting preliminary injunction to a class of prisoners who contended that they were not provided with discharge plans for mental health treatment upon their release in violation of state law).

281. *See* Robert Kolker, *Quality-of-Life Control*, N.Y. MAG., Jan. 14, 2002, available at <http://www.newyorkmetro.com/nymetro/news/politics/newyork/features/5581> (last visited Mar. 15, 2003).

282. *See supra* notes 109-110 and accompanying text. At the same time, federal law authorizes local public housing authorities to consider a range of mitigating evidence showing a tenant's suitability for federally subsidized housing notwithstanding a prior conviction. *See, e.g.*, 24 C.F.R. § 960.203(d) ("In the event of the receipt of unfavorable information with respect to the applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense)."); *id.* § 960.203(d)(1) (authorizing local public housing authorities to consider "factors which might indicate a reasonable probability of favorable future conduct"). Furthermore, determinations of ineligibility by a housing authority may be challenged by requesting an administrative hearing. *See, e.g.*, 42 U.S.C. § 1437d(c)(2); 24 C.F.R. § 982.554.

283. *See* Ammann, *supra* note 71, at 240.

284. *See, e.g.*, SOCIAL SECURITY ADMIN., PROGRAM OPERATION MANUAL SYSTEM SI 00520.900 *et seq.* (describing prerelease procedures to provide a way for potentially eligible individuals to apply for disability benefits under the Social Security Administration's Supplemental Security Income program prior to their release from public institutions such as prisons), available at <http://policy.ssa.gov/poms.nsf/poms> (last visited Mar. 15, 2003).

fenses, in order to avoid civil disqualifications for critical needs like housing and employment.²⁸⁵

C. Targeting Specific Homeless Populations

Another effective approach to homeless advocacy focuses on specific homeless populations. While poverty is the underlying cause of homelessness among all groups, different populations have different needs and would benefit from more targeted types of advocacy. This Section focuses on two postential gorups: families; and the elderly.²⁸⁶

1. Homeless Families

More programs should focus on homeless families—the fastest growing segment of the homeless population. Domestic violence is an underlying cause of homelessness among many families, forcing women to leave their homes even though they may have no place else to go. Approximately one-half of homeless women and children are victims of domestic violence.²⁸⁷ Advocacy may involve obtaining orders of protection and helping domestic violence victims navigate legal barriers to affordable housing. Homeless families also face family law issues, including the potential loss of children to foster care.²⁸⁸

Education represents another important issue for homeless families. Most homeless children do not attend school regularly, are forced to shuttle between different schools in a given academic year, attain lower education achievement standards, and have more emotional and behavior problems than other school children.²⁸⁹ As a result, a right to education for homeless children and youth was incorporated into the McKinney-Vento Homeless Education Assistance Improvement Act, guaranteeing homeless children and youth equal access to the same free, appropriate public education as other children and youth.²⁹⁰ The act orders that state

285. See Binder, *supra* note 276, at 15 (describing a homeless court program run outside the courthouse).

286. Other target homeless populations might include, for example, people with HIV/AIDS. See, e.g., Patti Phillips, *Adding Insult to Injury: The Lack of Medically-Appropriate Housing for the Homeless HIV-III*, 45 U. MIAMI L. REV. 567, 571 (1990-91) (describing the importance of legal advocacy for homeless people with HIV).

287. See Gretchen P. Mullins, *The Battered Woman and Homelessness*, 3 J.L. & POL'Y 237, 244 (1994); Tusan, *supra* note 67, at 1187.

288. Rosenheck et al., *supra* note 38, at 2-11.

289. See Shelia O'Leary, *Student Research: Hot Topics in Education, Educating Homeless Children*, 8 GEO. J. ON POVERTY L. & POL'Y 513, 513-14 (2001).

290. 42 U.S.C. § 11431 (2002).

educational agencies ensure that homeless children have the same right to public education as other children, and explicitly requires states to review and, if necessary, revise any laws or rules that may act as a barrier to the educational success of homeless children,²⁹¹ such as residency and school records requirements and lack of transportation.²⁹² The No Child Left Behind Act of 2001²⁹³ reauthorized the McKinney-Vento Act and strengthened various provisions, for example, by requiring school districts to keep children who are homeless in the same school they attended when permanently housed or the school they last attended, if that is the choice of the parent or guardian, for the duration of their homelessness or until the end of the academic year, if they become housed.²⁹⁴ Inadequate funding and noncompliance with statutory requirements, however, have previously undercut the McKinney-Vento Act's goals.²⁹⁵ Lawyers can seek greater enforcement of the McKinney-Vento Act through public education to educate homeless parents and children about their rights,²⁹⁶ direct legal services providing advocacy at the local school level,²⁹⁷ litigation challenging broader policies,²⁹⁸ and legislative advocacy to promote statutory and regulatory laws at the state and local level to help guarantee the rights of homeless children and youth.²⁹⁹

2. Elderly Homeless

The elderly represent another growing segment of the homeless population,³⁰⁰ one that does not generally receive much publicity but would greatly benefit from increased advocacy. Although the

291. *Id.*

292. Deborah M. Thompson, *Breaking the Cycle of Poverty: Models of Legal Advocacy to Implement the Educational Promise of the McKinney Act for Homeless Children and Youth*, 31 CREIGHTON L. REV. 1209, 1222-24 (1998).

293. Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified at 20 U.S.C. § 6301 *et seq.* (2003)).

294. See 42 U.S.C. § 11432(g)(3); see also Nat'l Coalition for the Homeless, President Bush Signs Education Reform Bill (Jan. 8, 2002) (describing improvements to the McKinney-Vento Act with the most recent amendments), at <http://www.nationalhomeless.org/edannouncement.html> (last visited Mar. 15, 2003).

295. Thompson, *supra* note 292, at 1213-14.

296. *Id.* at 1234-35.

297. *Id.* at 1235-36.

298. See, e.g., Joe Surkiewicz, *Public Justice Center Sues Montgomery County, Md., Over Homeless Students' Rights*, DAILY REC., May 20, 2002, at B1 (challenging county's policy refusing to permit students to attend their school of origin when they temporarily move outside their school district due to homelessness).

299. Thompson, *supra* note 292, at 1236-38.

300. See *supra* note 49 and accompanying text.

definition of “elderly” varies, there is a growing consensus that individuals fifty years of age and older should be included in the population of elderly homeless individuals. Homeless persons aged fifty to sixty-five may resemble older individuals due to their physical health, which is exacerbated by poor nutrition and severe living conditions.³⁰¹

The increase in homelessness among elderly persons is primarily due to the declining availability of affordable housing and growing poverty among certain segments of this age group.³⁰² A 1998 HUD study found that, of the 12.5 million persons in households identified as having “worst case housing needs,” 1.5 million were elderly people.³⁰³ Although Social Security benefits have significantly reduced poverty among the elderly,³⁰⁴ elderly persons are more likely than nonelderly persons to have incomes just over the poverty line, leaving them less money to spend on basic necessities, including housing.³⁰⁵

Also, elderly people generally are entitled to receive Social Security retirement benefits only if they (or their spouses) have worked the required forty quarters.³⁰⁶ While those sixty-five and over who do not qualify for Social Security because they lack the necessary work credits are eligible for SSI benefits (assuming they meet the income, resource, and other eligibility requirements), those under sixty-five only receive SSI if they prove they are disabled or blind.³⁰⁷ Moreover, SSI benefits, which primarily consist of a federal portion and in some states, a supplement,³⁰⁸ can be insufficient to find housing.³⁰⁹ Poor elderly persons between fifty

301. See Nat'l Coalition for the Homeless, *supra* note 49.

302. See *id.*; see also Saul Friedman, *Family & Relationships; Gray Matters; Census Bureau Counts More Seniors in Poverty*, *NEWSDAY*, Oct. 15, 2002, at B18.

303. U.S. DEP'T OF HOUS. & URBAN DEV., RENTAL HOUSING ASSISTANCE—THE CRISIS CONTINUES: 1997 REPORT TO CONGRESS ON WORST CASE HOUSING NEEDS (1998), available at <http://www.huduser.org/publications/affhsg/worstcase/finding6.html> (last visited Mar. 15, 2003).

304. See, e.g., KATHRYN H. PORTER ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, SOCIAL SECURITY AND POVERTY AMONG THE ELDERLY: A NATIONAL AND STATE PERSPECTIVE ix (1998) (citing census data demonstrating that, in 1997, Social Security lifted 11.4 million elderly people out of poverty and reduced the poverty rate among the elderly by three-quarters), available at <http://www.cbpp.org/4-8-99socsec.pdf> (last visited Mar. 15, 2003).

305. See Nat'l Coalition for the Homeless, *supra* note 49.

306. See 42 U.S.C. § 414(a) (1991).

307. See 42 U.S.C. § 1381-1382c.

308. See 20 C.F.R. §§ 416.401-416.586 (2003) (discussing the amount of SSI grants).

309. See ANN O'HARA & EMILY MILLER, TECHNICAL HOUS. COLLABORATIVE & CONSORTIUM FOR CITIZENS WITH DISABILITIES HOUS. TASK FORCE, PRICED OUT IN 2000: THE TREND CONTINUES (2001) (finding that in 2000, people with disabilities

and sixty-five who are not disabled, and thus not eligible for SSI, are in a particularly precarious position. They must instead rely on state welfare payments, which vary by state and do not exist in all states, because they also do not qualify for federal welfare benefits unless they have dependent children.

In addition, the 1996 welfare reform act bars many immigrants, including immigrants lawfully in the United States, from receiving many federal benefits including food stamps and SSI.³¹⁰ These restrictions disproportionately impact elderly homeless immigrants, many of whom may have lived in the United States for years, because working can become more difficult with age, particularly for those whose prior work has been in unskilled, labor-intensive jobs.

Elderly homeless people are also particularly vulnerable to crime, abuse, and disease. Studies have demonstrated they are frequently robbed or assaulted at higher rates than other age groups.³¹¹ As a result, many avoid homeless shelters, where they feel especially vulnerable, and instead sleep on the street. Elderly homeless individuals are also more prone to both medical and psychiatric problems, which may endanger their health and safety.

While government programs to provide more affordable housing and increase income levels represent the most effective way to reduce homelessness among the elderly, advocates can still play an important role in addressing the needs of the elderly poor. For example, advocates can assist older individuals under the age of sixty-five in obtaining SSI benefits based on disability after their claims are denied. While many meritorious claims are initially denied, success rates are high on appeal,³¹² particularly when the claimant receives legal advice or representation. Advocates can also help elderly persons with other issues, such as public assistance and food stamps, eviction prevention (for those not yet homeless), immigration issues, and access to health care.

receiving SSI benefits needed to pay—on a national average—ninety-eight percent of their SSI benefits in order to be able to rent a modest one-bedroom unit at Fair Market Rent), available at <http://www.c-c-d.org/POin2000.html#e> (last visited Mar. 15, 2003).

310. 8 U.S.C. § 1611(a) (2002) (barring any and all aliens except “qualified aliens” for most federal benefits); *id.* § 1612(a) (barring some groups of “qualified aliens” for various federal benefits, including SSI and food stamps).

311. *See, e.g.*, Nat’l Coalition for the Homeless, *supra* note 49.

312. *See supra* note 243 and accompanying text. In fact, the older a person is, the more favorable the standard for establishing disability, at least insofar as it impacts exertional activities. *See* 20 C.F.R. pt. 404(P), app. 2, §§ 200-204 (setting forth guidelines to determine disability for individuals who have an exertional impairment and whose condition prevents them from returning to their past employment).

D. Defining Issues and Shaping Perceptions Through Advocacy

Legal advocacy also can play an important role in shaping the public's attitudes about homelessness and deepening its understanding of this complex problem.³¹³ It can foster political change by pressuring policymakers to act.³¹⁴ Certainly, lawyers have helped focus public attention on the issues, including by opposing efforts by cities to criminalize homelessness.³¹⁵ By framing homelessness in structural rather than personal terms, lawyers have helped cause the public to blame homelessness—at least to some extent—on the economy and housing market rather than individual “failings” like mental illness or chemical dependency.³¹⁶ This is important because much of the social science research on homelessness tends to focus not on housing or poverty issues, but on the differential diagnosis of mental illness among the homeless themselves.³¹⁷

Still, negative stereotypes of homeless people remain. Advocates should continue to counter the mistaken view, based in part on common observations of the more visible street homeless population,³¹⁸ that homelessness is more about mental illness and sub-

313. See generally Minow, *supra* note 207, at 294 (“Because lawyers work with words, they can tell stories not only to courts and legislatures, but also to broader publics.”).

314. See generally Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 300 (1996).

315. See Benjamin S. Waxman, *Fighting the Criminalization of Homelessness: Anatomy of an Institutional Anti-Homeless Lawsuit*, 23 STETSON L. REV. 467, 491 (1994) (describing the importance of having an effective public relations strategy when commencing homeless rights lawsuits).

316. See Blasi, *supra* note 18, at 221.

317. See BURT ET AL., *supra* note 3, at 98 (noting strong bias of social science data towards long-term homeless who tend to have more alcohol, drug, and mental health problems); Blasi, *supra* note 18, at 228 (noting that while negative perceptions of welfare recipients are influenced by beliefs about poverty and race, negative perceptions of homelessness tend to be based on associations between personal “failures” like mental illness and substance abuse that divert attention from structural forces like the affordable housing crisis and inadequate income supports); KUSMER, *supra* note 10, at 230 (noting the sociological studies of the homeless population in skid rows during the 1950s and 1960s emphasized deviant personal habits, such as drinking habits); Tusan, *supra* note 67, at 1147 (citing Marybeth Shinn & Beth C. Weitzman, *Research on Homelessness*, 46 J. SOC. ISSUES 1, 3 (1990)).

318. See, e.g., Nina Bernstein, *Bloomberg and the Man on the Street: Reaching Out to the Homeless, Mayor Finds No Easy Answer*, N.Y. TIMES, Jan. 20, 2002, § 1, at 31. (describing studies about “the chronically homeless—deranged, debilitated people who dominate the public image of the problem.”); see also KUSMER, *supra* note 10, at 242 (“Because many homeless do not act or look ‘normal,’ people readily jump to the conclusion that the homeless population is composed primarily of potential criminals, psychotics, or drug addicts.”).

stance abuse than poverty. It is not that mental illness and chemical dependency are unimportant factors in explaining homelessness, but rather that these factors alone generally do not explain why someone becomes or remains homeless. Advocates should find (and, to the extent possible, publicize) cases that show how easy it is for people to fall through the cracks and become homeless due to extreme poverty. They should pursue litigation that exposes the socio-economic forces beneath individual hardships, putting homelessness in the context of larger policy issues and encouraging long-term solutions by decision-makers in the political arena.

E. Lawyering in Holistic Settings

In recent years, there has been an increase in interdisciplinary or holistic approaches to address the range of needs—legal and non-legal—of low-income clients.³¹⁹ Some models involve increased cooperation between lawyers and social workers,³²⁰ while others employ a broader multidisciplinary framework involving not only law and social work, but also medical and psychiatric treatment, nutrition, counseling, job training, and other services.³²¹

A multidisciplinary model in which layers work alongside other professionals represents an effective way to address the range of needs confronting homeless individuals and families. Unfortunately, legal services organizations generally do not or, more likely, cannot provide the case management, social work, medical and psychiatric treatment, job training, and substance abuse counseling that many homeless people need. Conversely, social services agencies and community based organizations assisting homeless people tend not to provide legal assistance even though their clients often

319. See, e.g., Stacy L. Brustin, *Legal Services Provision Through Multidisciplinary Practice: Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787, 799 (2002) (outlining ethical issues in multidisciplinary practice in not-for-profit service organizations); Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123, 2126 (1999) (describing ways in which social workers can assist in the delivery of legal services by helping lawyers in understanding and relating to clients); Christina T. Pierce et al., *Social Work and Law: A Model for Implementing Social Services in a Law Office*, NAT'L ASS'N ELDER L. ATT'Y Q., Spring 2003, at 3 (2000) (describing advantages of a holistic approach in addressing financial, legal, and psychosocial issues confronting elderly clients); Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 CLINICAL L. REV. 227, 231-33 (2000) (surveying different "social justice collaboratives").

320. Galowitz, *supra* note 319, at 2124-26.

321. See Brustin, *supra* note 319, at 792-95.

confront issues involving public benefits, housing, immigration, family law, consumer law, and other matters that could best be addressed by legal advice or actual representation in administrative agencies or courts.

Existing evidence suggests the value of interdisciplinary approaches that provide outreach services to homeless people, particularly those who are mentally ill.³²² It also indicates the importance of integrating the allocation and delivery of services for homeless people through continuum of care models that seek to provide services from the time people are on the street or in shelters until they find permanent housing.³²³ Yet, the existing continuum of care models generally do not include legal services on various issues. Incorporating legal advocacy into existing social service models would provide better and more comprehensive services and, in turn, improve the quality of the legal advocacy by linking it to services addressing other, non-legal issues confronting homeless clients. Collaboration between lawyers and other professionals like social workers will also make lawyers more aware of the psychological aspects of their clients' legal problems.³²⁴

Incorporating legal advocacy into programs that provide stabilizing after-care to formerly homeless people represents another effective way of combating homelessness. Many homeless individuals and families who have obtained permanent housing are generally vulnerable to becoming homeless again. Often, a glitch with their welfare benefits, a problem with their landlord, or a setback at work is all that it takes to start the downward spiral towards homelessness. While social service professionals can address issues like medical and psychiatric treatment or substance abuse counseling, lawyers can provide the critically needed assistance in

322. See, e.g., Erickson & Page, *supra* note 206, at 6-7 to 6-8; Gary A. Morse et al., *Outreach to Homeless Mentally Ill People: Conceptual and Clinical Considerations*, 32 COMMUNITY MENTAL HEALTH J. 261, 265-68 (1996); Marcus Plescia et al., *A Multidisciplinary Health Care Outreach Team to the Homeless: The 10-year Experience of the Montefiore Care for the Homeless Team*, 20 COMMUNITY HEALTH 58, 60-61 (1997).

323. See, e.g., BURT ET AL., *supra* note 3, at 269 (describing HUD's efforts to make continuums of care the norm); Stanley S. Herr & Stephen M.B. Pincus, *A Way To Go Home: Supportive Housing and Housing Assistance Preferences for the Homeless*, 23 STETSON L. REV. 345, 399 (1994) ("To break the cycle of homelessness in each community, local governments will need to build a continuum of services to assist people at each stage of homelessness.").

324. See Galowitz, *supra* note 319, at 2128-30 (discussing the importance of social work principles of empathy when providing assistance to low-income individuals).

matters like public benefits or eviction defense to prevent future homelessness.³²⁵

Legal advice or representation could also be added to existing social services for homeless people who have been placed in supportive housing programs to help prevent their becoming homeless again.³²⁶ These programs, which provide subsidized permanent housing and accompanying social services to homeless people, mainly to single adults with mental disabilities, have proven remarkably successful in preventing future homelessness.³²⁷ They could, however, further benefit from legal assistance in helping clients deal with issues like access to health care, public benefits, and barriers to employment.

Of course, lawyers practicing in such multidisciplinary settings will need to balance a program's goal of addressing clients' social, psychological, and medical needs while retaining principles of zealous advocacy that govern the legal profession.³²⁸ Tension may arise, for example, between lawyers and social workers on how to best handle an issue based on the different principles and rules governing their respective professions. Programs utilizing a holistic approach will need to develop a system to address ethical issues like confidentiality, conflicts of interest, and independence of professional judgment.³²⁹

An ideal model would thus integrate legal advocacy with other services to address the myriad of problems confronting homeless people. The wide range of issues³³⁰ and the current patchwork na-

325. See *supra* Part III.B.

326. Cf. Dennis P. Culhane et al., *Public Service Reductions Associated with Placement of Homeless Persons with Severe Mental Illness in Supportive Housing*, 13 HOUSING POL'Y DEBATE 107, 111 (2002) (describing success and cost-effectiveness of supportive housing programs); see Barrow et al., *supra* note 206, at 41-42 (noting the importance of access to public benefits and housing-related services in preventing the formerly homeless from becoming homeless again); Watson, *supra* note 113, at 361-62.

327. See Martha R. Burt, *Demographics and Geography: Estimating Needs*, in PRACTICAL LESSONS, *supra* note 38, at 1-19 (noting that many programs have been able to retain about eighty percent of the previously homeless people they serve in decent, stable housing arrangements); Dennis P. Culhane, *New Strategies and Collaborations Target Homelessness*, 4 HOUSING FACTS & FIGURES, 2002, at 1, 4 (describing the potential value of supportive housing in addressing the needs of the approximately 200,000 to 300,000 chronically homeless individuals in the United States).

328. See Brustin, *supra* note 319, at 827.

329. See generally *id.* at 837-64; Galowitz, *supra* note 319, at 2134-47 (describing tension between "advocacy" model of lawyers and "best interests" model of social workers).

330. See, e.g., Karen Houppert, *For Her Own Good*, NATION, Feb. 4, 2002, at 21 (describing how the intersection of low-wage employment, restrictions on welfare, the

ture of social welfare protections³³¹ underscore the value of more holistic approaches to homelessness.

CONCLUSION

Lawyers have played an important role in addressing homelessness over the past two decades. They helped win an expansion of emergency shelter services during the 1980s and mitigate the effects of the increasing criminalization of homelessness since the 1990s. In addition, litigation has helped raise awareness about and shape public attitudes towards homelessness.

Yet, existing strategies have proven limited in addressing the underlying causes of homelessness. Legal advocacy cannot, of course, "solve" a problem like homelessness, which ultimately derives from the basic structure of our political, economic, and social system. Absent a strong political commitment to creating more affordable housing and addressing other aspects of poverty, many people will continue to be homeless. Yet, lawyers can make an important difference both in the lives of individual clients and on larger policies. This Article has attempted to point out some possible future directions of homeless legal advocacy that build on past approaches and concentrate on other areas that offer a promising way to address the problem.

costs of quality child care, and the lack of affordable housing all contributed to the periodic homelessness of a single mother and her daughters).

331. See Edelman, *supra* note 231, at 548.

